UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
MAGNESIUM FROM CHINA	)	731-TA-1071 and 1072
AND RUSSIA	)	(Preliminary)

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Friday,
March 19, 2004

Main Hearing Room
United States International
Trade Commission
599 E Street, S.W.
Washington, D.C.

The conference commenced, pursuant to notice, at 9:30 a.m., before the staff of the United States International Trade Commission, Robert Carpenter, Director of Investigations, presiding.

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I N D E X

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

MR. CARPENTER: Good morning and welcome to the United States International Trade Commission's confidential in connection with the preliminary phase of antidumping investigation No.s 731-TA-1071 and 1072 concerning imports of magnesium from China and Russia.

My name is Robert Carpenter. I am the commission's Director of Investigations and I will preside at this conference.

Among those present from the commission staff are, from my far right, George Deyman, the supervisory investigator; Fred Fischer, the investigator; on my left, Peter Sultan, the attorney/advisor; John Benedetto, the economist; Charles Yost, the accountant; and Vincent DeSapio, the industry analyst.

I understand the parties are aware of the time allocations. I would remind speakers not to refer in their remarks to business proprietary information and to speak directly into the microphones.

We also ask that you state your name and affiliation for the record before beginning your presentation.

Are there any questions?

(No response.)

MR. CARPENTER: If not, welcome, Mr. Dorn. Please proceed with your opening statement.

MR. DEMPSEY: Joe Dorn with King & Spalding.

This is the first magnesium investigation where the Commerce Department has defined the scope of the imported article subject to investigation to include primary and secondary magnesium and to include pure and alloy magnesium in both cast and granular forms.

Unlike prior investigations, the evidence will show beyond any doubt that pure and alloy magnesium are interchangeable and competing head to head in at least the end use segments of aluminum alloying and steel desulfurization. Those two segments account for over half of U.S. magnesium consumption.

The broad scope of this case is dictated in large part from painful experience. After the domestic industry obtained an antidumping order against pure cast magnesium from China in 1995, the Chinese exporters simply shifted their exports to pure granular magnesium.

When the U.S. industry closed that hole in

the dike with an antidumping order against pure granular magnesium at the end of 2001, the Chinese exporters intensified their focus on exporting alloy magnesium.

They sold their ASTM specification alloy magnesium not only to traditional users of alloy magnesium, such as die casters, but also to the aluminum alloying and steel desulfurization industries, which only seek the magnesium content of the product.

In this case, therefore, the petition covers all types and forms of magnesium.

The broader product scope dictates a broader like product definition than in prior cases. The salient new fact for like product analysis in this case is that domestic primary pure magnesium, domestic secondary alloy magnesium, Chinese alloy magnesium and Russian pure magnesium are all being used interchangeably in the aluminum alloying and steel desulfurization end use segments.

The fact that China is exporting ASTM alloy magnesium to avoid antidumping duties on pure magnesium is widely reported in the trade press. It is no secret.

It would contravene congressional intent to

define pure and alloy magnesium as two like products and thus to ignore the adverse impact of Chinese alloy imports on U.S. Magnesium's sales of pure magnesium.

The domestic like product, therefore, includes primary and secondary, pure and alloy magnesium and all cast and granular forms, shapes and sizes. The domestic industry includes U.S. Magnesium, the only remaining producer of primary magnesium, and a half dozen companies that recycle magnesium-based scrap to make alloy magnesium.

Three of those producers of secondary magnesium and one union local representing their workers have expressed their support for the petition.

In assessing trend data, the commission also should take into account the closure of Northwest Alloy's 40,000 ton primary magnesium plant in October 2001.

This industry is materially injured by dumped imports from China and Russia. From 2000 to 2003, the volume of subject imports jumped 70 percent as their average unit value dropped 27 percent.

Subject imports accounted for 50 percent of U.S. magnesium imports from all countries in 2003, up from only 25 percent in 2000.

These increasing imports have undersold

U.S. production and forced U.S. Magnesium to lower its prices to keep from shutting down its new electrolytic cells. The impact on U.S. Magnesium's operating income has been devastating.

This industry is threatened with additional injury by reason of the rapidly increasing imports and their rapidly declining unit values. The Chinese and Russian magnesium industries have many times more capacity than the U.S. industry. Both foreign industries are export-oriented and they have enough unused capacity to supply the entire U.S. market.

U.S. Magnesium has invested heavily in new technology to become one of the world's most technologically advanced magnesium producers. The dumped imports, however, have driven prices down so far that U.S. Magnesium has suffered a negative return on the initial phase of its investment project and it is being deterred from executing the remaining phases.

U.S. Magnesium needs the commission's help to restore fair competition so that it can earn a reasonable return on its investment and expand its capacity to serve a growing market.

Thank you.

MR. CARPENTER: Thank you, Mr. Dorn.

Mr. Gurley?

MR. GURLEY: Good morning. My name is John Gurley of Coudert Brothers, counsel for AVISMA, an exporter of magnesium from Russia.

I would like to outline some of the central themes that you will hear today from those in opposition to the petition.

First, you will hear testimony on why U.S. Magnesium is asking the commission to focus exclusively on the past and not on the present or the future. Indeed, U.S. Magnesium filed this case at a time when the magnesium market is in full upswing.

Magnesium prices have surged since late 2003 and are expected to continue to increase. Therefore, this antidumping petition was clearly unnecessary.

From a tactical point of view, the timing of this case does make some sense in that it was filed before the first quarter 2004 data could confirm what all parties should readily acknowledge: that 2004 and beyond will be very, very good for all magnesium producers.

Second, you will hear testimony today about U.S. Magnesium's share of the market. The stark truth is that U.S. Magnesium's share of the market has increased substantially over the last two years.

Third, you will hear testimony today that

demonstrates that U.S. Magnesium is operating at full capacity. Testimony from Alcoa and Alcan will show that U.S. Magnesium is simply unable to supply additional magnesium to them. In fact, this has been a situation for some time now. We are now in a classic short supply market.

Fourth, you will hear testimony today about U.S. Magnesium's like product argument. Specifically, U.S. Magnesium is asking the commission to forget the many determinations made by the commission which hold that alloy magnesium and pure magnesium are two distinct like products.

Lastly, you will hear today about corporate mismanagement. U.S. Magnesium is in some ways a poster child for bad corporate governance.

What I have described today is not a fact pattern which is normally brought before this commission and for good reason.

Thank you.

MR. CARPENTER: Thank you, Mr. Gurley.

Mr. Dorn, would you come forward now with your panel, please?

(Pause.)

MR. CARPENTER: Welcome and please begin whenever you're ready.

MR. LEGGE: Good morning. I am Mike Legge, President and CEO of U.S. Magnesium LLC. U.S. Magnesium's headquarters are Salt Lake City, Utah and its production operations are at Rowley, Utah on the western shore of the Great Salt Lake.

I joined the predecessor of U.S. Magnesium in 1979 and was appointed president of Magcorp in 1993. I have over 25 years of experience in the magnesium industry.

U.S. Magnesium is the sole remaining U.S. producer of primary magnesium. That is, magnesium produced by decomposing raw materials rather than through recycling magnesium scrap.

Since 1998, over two-thirds of U.S. primary magnesium capacity has been shutdown because of import competition. The other two U.S. producers of primary magnesium were Dow Magnesium, which closed in 1998, and Northwest Alloys, which shut down in October 2001.

Notwithstanding these closures, market prices continued to decline as imports quickly absorbed Dow's and Northwest's market share.

Imports of alloy magnesium from China and pure and alloy magnesium from Russia have rapidly increased in the last several years. These imports have entered the U.S. at rapidly declining prices.

Given our relatively high operating leverage and the economic necessity to operate our electrolytic cells continuously, U.S. Magnesium has been forced to lower its prices in tandem with the import prices. The adverse impact of the lower priced imports has been devastating to our bottom line.

This is particularly frustrating given the substantial progress that U.S. Magnesium has made in improving its production efficiency since we last appeared before the commission in 2001. In fact, I want the commission to understand that although we have been severely injured by the dumped imports from China and Russia, U.S. Magnesium, unlike the two primary producers that closed, has persisted in an ambitious modernization program that has made U.S. Magnesium one of the most technologically advanced and most efficient magnesium producers in the world today. We have invested almost $50 million on this project since 2000.

U.S. Magnesium's production facility was established in 1972. The raw material from the plant is magnesium chloride, derived from magnesium rich brines from the Great Salt Lake. We have an intricate system of solar evaporation ponds covering approximately 135,000 acres in which the brine is

concentrated, resulting in magnesium chloride powder that is fed into the plant.

After purification, the magnesium chloride is placed in a number of electrolytic cells that produce molten primary pure magnesium. The molten magnesium is transferred to the cast house, where it is further refined. It is then cast into primary pure magnesium ingots.

Alternately, it can be cast into alloy magnesium ingots after the addition of small amounts of alloying agents such as aluminum and zinc and possibly magnesium scrap.

U.S. Magnesium sells pure and alloy ingots in all segments of the market. We employ over 400 people. The petition and our questionnaire response provide you with details about how our company and others have been injured by the low prices and the rising volume of imports of magnesium from China and Russia. The imports have exerted relentless and ever increasing pressure on U.S. Magnesium's prices.

With the rising costs for energy and other inputs and declining magnesium prices, U.S. Magnesium has been caught in a cost/price squeeze that resulted in severe losses.

On August 3, 2001, Magcorp was forced to

file for protection under Chapter 11 of the U.S. Bankruptcy Code. The bankruptcy court authorized the sale of substantially all of Magcorp's assets to U.S. Magnesium. The sale was completed in June 2002. During the course of the bankruptcy process, Magcorp wrote down the value of its fixed assets as impaired.

Despite U.S. Magnesium's financial difficulties and even the bankruptcy, U.S. Magnesium has pursued a major modernization program to improve the company's production technology, to improve efficiency, and to reduce unit costs.

The centerpiece of this plan was the development and installation of a new type of electrolytic cell to convert magnesium chloride into liquid primary magnesium. The new type of cell, which we call the M cell, was a product of five years of intensive research and development.

The M cell has a number of great advantages over existing cell technology. First, they have three times the output of the older cells; second, they provide dramatically improved efficiencies in electrical power consumption, manpower requirements, byproduct capture, environmental compliance, and maintenance costs. The original modernization plant called for construction of 60 M cells filling two

buildings and the decommissioning of all of the plant's older IG Farben and the AMAX sealed cells or S cells.

Based on this plan, the plant would develop a capacity to produce about 55,000 metric tons per year of primary pure or alloy magnesium with a much reduced unit manufacturing cost.

As U.S. Magnesium approached the implementation of the plan in 2001, however, financial difficulties due to the deteriorating market conditions resulted in reduced cash flows and caused the initial scope of the project to be scaled back from 60 M cells to only 30 M cells. This was a painful decision for management.

The reduced scope of the plan had the effect of reducing the overall production capacity of the plant and also reducing the overall financial benefit of the system, as it required us to continue to operate 30 of the older, less efficient S cells.

Under the reduced scope, the plan was implemented with installation of 30 M cells in the place of the IG Farben cells at a capital cost of $40 million. Construction of the M cells operating system had been delayed by about one year by certain technical and engineering issues that had to be

resolved.

In April 2001, the first M cells started coming on line for production. The last M cell was brought on line 17 months later, in September of 2002.

During the construction period, from approximately March 2001 through September 2002, the plant's production volume was constrained as old cells were decommissioned and the new cells were constructed. The plant's output was temporarily reduced during this period.

With the completion of the scaled down program, the capacity of the plant with the 30 M cells and the 30 older S cells was 39,000 metric tons per year of electrolytic production and 43,000 metric tons per year of total pure and alloy magnesium ingot production.

As U.S. Magnesium realized that it would be unable to perform the full scope of its modernization program, it took an interim step during 2002 and 2003 to apply certain aspects of the M cell technology to the older S cells.

The modified cells were termed T cells and they provided improved chlorine recovery and strength, improved electrical power efficiencies and increased magnesium recovery. The cost of the upgrade to the

T cells was approximately $6 million.

The efficiency gains from even the scaled back cell modernization program have been very significant. We will show you an exhibit which compares the operating performance of the M cells with the old IG Farben cells that they replaced. The contrast is dramatic.

First, we increased electrical power efficiency at the cell. The consumption of electrical energy per pound of magnesium dropped from 9 kilowatt hours per pound with the older IG cells to about 6 kilowatt hours per pound with the new M cells.

Second, we improved the strength of the chlorine at the cell discharge and recovery of the chlorine. With the old IG cells, chlorine strength at discharge was only 70 percent, only 69 percent of the total chlorine was recovered. With the M cells, chlorine strength at discharge is 99.9 percent and more than 96 percent of the total chlorine is captured.

Third, we extended the life of the cell before the refractory lining must be rebuilt. The IG Farben cell required relining after 500 days of operation while the M cell operates for far longer, 1200 days.

There are numerous other advantages of the M cells. For example, they have allowed us to reduce our labor usage per ton of magnesium produced by almost 30 percent from 2000 to 2003. The new cell technology has also caused a dramatic improvement in environmental performance, much lower chlorine emissions and has enabled us to comply with MACT air emission standards established by EPA for the magnesium industry in 2003.

My second display exhibits the plant's total chlorine emission reductions from about 19,850 metric tons of chlorine in 2000 to less than 1800 metric tons in 2003, a drop of 91 percent.

Second, as you will see in my third exhibit, chlorine emissions per ton of magnesium produced fell from .73 tons in 2000 to only .05 tons in 2003. We are proud of these environmental accomplishments and want to be able to do more.

The much better capture and strength of byproducts such as chlorine means not only improved environmental performance, but also a substantial increase in U.S. Magnesium's byproduct revenues.

Thus, U.S. Magnesium has made great strides in reducing costs and improving its competitiveness even in the face of increased input prices.

As I noted earlier, the original modernization program had to be scaled back because of the financial constraints arising from the deteriorating market conditions. We believed then and we believe even more strongly today that the implementation of the other half of the program would have tremendous benefits.

What we lost when the imports limited us to building only 30 of the 60 planned M cells was not only just an expansion of production capacity. Rather, it was the opportunity to achieve major efficiencies and cost savings across all of the company's volume.

Currently, the 30 T cells are more efficient than their predecessors, but they are significantly less efficient than the M cells. Successful completion of the antidumping case should permit us to complete the program with its unit cost reductions, increasing byproduct capture and revenues and still better environmental performance.

We have already taken steps to put ourselves in a position to implement such a plan. In fact, we have improved on the original plan based on the knowledge gained from running the M cells during the past two years.

First, plans have been prepared to upgrade the existing 30 M cells from 250,000 amps per unit to 300,000 amps per unit power input. This would step up the output by 5000 metric tons a year.

Second, we have also completed detailed engineering on expanding total plant capacity by placing M cells in the current empty building number 2. These new cells would incorporate an even more advanced design with larger electrodes and increased capacity.

U.S. Magnesium has already carried out detailed engineering and third-party consulting reviews on this aspect of the project. U.S. Magnesium believes that these plans are clearly feasible in technical and engineering terms. There are no regulatory restrictions on the size of U.S. Magnesium's magnesium production.

Depending on how many of the new M cells were installed, U.S. Magnesium's electrolytic production capacity would increase to the range of 60,000 metric tons per year to 73,000 metric tons per year, with a total primary pure and alloy magnesium ingot capacity being higher still.

While helping further to reduce our variable unit costs, the expansion of U.S. Magnesium's capacity

would permit us to do something that we have not been permitted to do but that the foreign producers such as in China have been doing and that is to reduce our unit fixed costs by spreading our fixed costs over a larger volume.

Given its existing infrastructure, U.S. Magnesium is in an excellent position to make important reductions in unit fixed costs. For example, U.S. Magnesium has ample existing capacity to harvest magnesium chloride brine from lake brine to supply two to three times our current electrolytic cell capacity. A similar situation exists with our ample current ingot casting capability.

By expanding our M cell production capacity, the combined impact of lower unit variable costs, lower unit fixed costs and the higher byproduct capture and revenues would realistically put U.S. Magnesium in a position to compete successfully with fairly traded foreign imports, even from China.

Unfortunately, these expansion plans are currently on hold due to cash shortages and low market prices due to the impact of dumped imports from China and Russia.

In conclusion, at a time when the U.S. industrial base is shrinking in many sectors,

here is an opportunity to permit one important U.S. industrial sector not only to survive, but also to expand to the benefit of the industry members, its workers and its customers.

U.S. Magnesium has shown what it can do through technological innovation to achieve efficiencies, reduce costs and obtain a higher level of environmental performance.

We ask for the commission's help in removing the distortions to the U.S. market caused by the dumped imports from China and Russia so that U.S. Magnesium and the other members of the U.S. industry can not only survive, but also become an expanding part of the U.S. industrial base.

Thank you.

MR. KAPLAN: Good morning. I am Howard Kaplan, Vice President of Chemicals and Byproducts for U.S. Magnesium. I have been involved in the magnesium business for over 20 years, working in sales, marketing and production positions. I hold a Ph.D. in metallurgy and material science from the University of Pennsylvania and based upon my professional experience and education I have a thorough understanding of the commercial realities, the economics and the science of the magnesium industry.

This is not the first time I have appeared before the commission. Consequently, I also have a pretty good understanding of the issues you consider in cases like this one.

I am here to talk principally about one such issue: what the commission calls the like product. I will address three questions.

First, should pure magnesium be viewed as part of the same like product as alloy magnesium?

Second, is secondary magnesium part of the same like product as primary magnesium?

And, finally, do granular and pure magnesium constitute a single like product?

I also understand that in considering these issues you will evaluate the evidence relating to the six factors that you normally consider. I will lay out for you our views on these factors as they relate to each of the three like product questions.

At the outset, however, I think it's important to consider these questions in a broader context. From our standpoint and from the standpoint of the marketplace generally, the only like product definition that makes sense is one that includes primary and secondary pure and alloy magnesium in all cast and granular forms, shapes and sizes.

Magnesium encompasses a broad continuum of chemistries, raw material sources and combinations and forms, shapes and sizes, with castings of various shapes weighing from as little as 200 grams in the shape of an ice cube up to 6000 pounds in the shape of a large T-bar ingot and in granular products ranging from fine powders to large briquettes.

If you try to slice and dice this product and ignore this continuum, you will not get a sensible result.

That said, let me talk specifically about pure and alloy magnesium. Here, I think the main issue in your mind probably is whether these two types of magnesium are put to the same end uses and whether they compete in the marketplace.

I suspect this is the main issue for two reasons. First, certain factors that you consider are clear cut. For example, I think it is clear that we and the producers in China and Russia make pure and alloy magnesium in the same facilities, through the same processes, and with the same employees.

Secondly, in the past, the commission has found that pure and alloy magnesium are used for completely different purposes and therefore do not compete in the marketplace at all. On that point, you

need to know that even if this was once true, it is not true now and has not been true for some time.

There is now a very large degree of overlap in the end uses in which pure and alloy magnesium are employed. Pure and alloy magnesium are both used in the production of aluminum alloys and in the manufacture of reagents used in iron and steel desulfurization.

Aluminum alloying refers to the combination of aluminum with other elements to produce foundry ingot, forging billet, extrusion billet, rolling slab and alloy pig, which is large ingot for future remelt. The downstream products are very diverse, from engine blocks made from foundry ingot to beverage can stock made from rolling slab.

These two end uses, aluminum alloying and desulfurization, account for a large portion of the U.S. magnesium market. According to USGS, in 2002, aluminum alloying accounted for 46 percent and desulfurization of iron and steel accounted for 13 percent of U.S. consumption of primary magnesium.

In addition, substantial secondary alloy magnesium is consumed in these segments. Thus, these end uses account for well over half of the U.S. magnesium market.

It is true that as the commission observed in some earlier cases involving only primary magnesium that there was a time when pure and alloy magnesium did not compete for this business. That is because U.S. producers of aluminum alloys and producers of desulfurization reagents for the iron and steel industry use pure magnesium because they only needed the magnesium content of the product. But increasingly they have used alloy magnesium because these alloy products have become increasingly available at low prices, especially from China.

In addition, U.S. producers of secondary magnesium do not make pure magnesium, thus, they sell alloy magnesium to participate in these market segments.

As a result, pure magnesium faces much more competition from alloy magnesium in these end use segments than it did when some of the earlier cases were before you.

Now, there is simply no doubt that our sales of pure magnesium face stiff and direct competition from alloy magnesium in these segments of the market.

Let me digress for a moment or two and discuss physical characteristics of the products we're talking about.

As the commission noted when an antidumping case was first filed against imported magnesium back in 1991, pure and alloy magnesium share a number of essential physical characteristics. Pure and substantially all alloy magnesium products contain at least 90 percent magnesium.

Although alloy magnesium may contain other metals that enhance the desirable properties of pure magnesium, it is magnesium metal that imparts to both pure and alloy products the essential characteristic of magnesium as a low density metal with a high strength to weight ratio. In other words, the physical characteristics of pure and alloy magnesium are very similar.

In a sense, then, it should come as no great surprise that pure and alloy magnesium are now used interchangeably in the production of aluminum alloys and reagents for iron and steel desulfurization.

The reasons for this relate to the manner in which the alloy magnesium is valued by the purchaser in those end use segments. That is, it is valued based primarily on the pounds of magnesium content, irrespective of the alloying elements. Simply put, these end users have increasingly used alloy magnesium instead of pure because on a price per pound basis,

these alloyed products have become increasingly available at low prices that make it advantageous for them to buy alloy rather than pure magnesium.

Even putting aside what has occurred with alloy imports from China, since the early 1990s, U.S. producers of secondary magnesium have increasingly supplied aluminum alloyers with alloyed magnesium. As noted before, unlike a pure magnesium producer, a secondary producer must sell alloy magnesium to compete in the market segments that use pure magnesium.

As for China, after an antidumping order was imposed on imports of pure magnesium ingots from China in 1995, Chinese exporters attempted to market ASTM specification alloys in the United States. Because the Chinese product was not qualified at that time by the automobile industry, it faced significant barriers in the die cast segment of the market, but it was readily accepted by aluminum alloyers whose specifications in some product lines were not as stringent.

Those Chinese exporters were able to serve traditional pure magnesium markets with alloy magnesium and avoid antidumping duties.

Aluminum alloy producers have since

significantly expanded their purchases of Chinese alloy and magnesium which is being entered into the U.S. as ASTM specification products such as AM50A, AM60B and AZ91. This is done in order to avoid the existing antidumping orders on pure magnesium which covers alloyed products not made to ASTM specifications.

For example, AM50A generally consists of a nominal 95 percent magnesium, 5 percent aluminum and less than .6 percent manganese. Thus, aluminum alloy producers can freely add this magnesium to their product, either using pure magnesium or AM50. The nominal .6 percent manganese content is easily tolerated in the aluminum alloy.

We are unaware of any technical limitation to the interchangeability of AM50A and pure magnesium for the most common aluminum alloys. AM60B is a similar product comprised of a nominal 94 percent magnesium, 6 percent aluminum and less than .6 percent manganese and is similarly usable in the aluminum industry.

AZ-91D is 90 percent magnesium, 9 percent aluminum, 1 percent zinc and less than 5 percent manganese. It is used by aluminum alloy producers in the production of products that can more easily

tolerate the presence of zinc.

Aluminum alloy producers also use magnesium alloys that are not specified by ASTM. For example, a 90/10 magnesium alloy, that is, 90 percent mag and 10 percent other unspecified materials, is a common alloy that is sold to end users in the aluminum alloy industry who are only interested in the magnesium content of the metal.

We are not simply speculating about the manner in which aluminum alloys are used in these products. We know it to be a fact and the market knows it to be a fact.

Very large aluminum companies have purchased alloy magnesium from China for use in aluminum alloying in their U.S. production facilities. We know this because U.S. Magnesium has sold pure magnesium to all of these companies in the past and has therefore lost sales of pure magnesium to imports of alloyed magnesium to these and other customers. We know it because some of these customers have told us and we know it because it has been reported in the trade press both before and after this case was filed.

American Metal Market made the following observation about this case: "U.S. Magnesium's petition against Chinese alloy did not surprise market

participants, many of whom anticipated the move for the past year. It was widely acknowledged that some consumers, aluminum producers especially, were using AM50A as a substitute for pure magnesium which they could get from China."

In other words, the entire U.S. metals market knows that alloy magnesium is being substituted for pure magnesium.

I would like to touch briefly on the pricing of pure and alloy magnesium. In the past, the commission has found that while the prices of the two types of magnesium generally moved in the same direction, they were not always closely correlated. That, too, is ancient history.

As direct intense competition between pure magnesium and alloy magnesium has occurred in a large segment of the market, the prices of pure and alloy magnesium have become very closely correlated.

The prices of dumped imports from China and Russia have driven the U.S. price of both pure and alloy magnesium sharply down in virtual lock step.

In 2000, there was a significant gap between pure and alloy magnesium prices. However, the sharp acceleration in the use of imported alloy magnesium in traditional pure magnesium applications has pulled

down alloy prices to essentially the same level as prices for pure magnesium.

You can also see this convergence of pure and alloy magnesium prices in the import data. In 2000, there was a gap between Russian pure and alloy prices, just as there was a gap in the price of domestically produced pure and alloy magnesium prices at that time.

In 2001, this gap narrowed and by 2003, there was virtually complete convergence of the Russian pure and alloy price.

Finally, there are no differences in the manner in which pure and alloy magnesium are distributed. Domestically produced pure and domestically produced alloy magnesium are typically sold directly to end users rather than through distributors and the same sales representatives generally sell both pure and alloy magnesium.

Pure and alloy magnesium imported from China and Russia are both typically sold through traders. The channels of distribution do not differ at all based on whether it is pure or alloy magnesium that is being sold.

Let me just sum up the pure versus alloy issue. Alloy magnesium is physically similar to pure

magnesium. Certain types of alloy magnesium are used interchangeably with pure magnesium in the applications that account for a majority of domestic magnesium consumption.

The behavior of these overlapping groups of end users shows that they as well as we perceive alloy magnesium as a substitute for pure magnesium.

The prices of the two types of magnesium are closely correlated. All primary alloy magnesium is necessarily derived from pure magnesium and all producers of primary magnesium make both pure and alloy magnesium in the same facilities using the same machinery, equipment and employees.

The channels of distribution are also very similar. From our point of view, then, pure and alloy magnesium are plainly a single like product.

The evidence relating to the other two issues, secondary versus primary and cast versus granular, can be summarized more succinctly. Primary and secondary magnesium are virtually identical from a physical and chemical standpoint. In fact, a significant portion of our alloy magnesium, and there really is no secondary pure magnesium to speak of, is made from both primary and secondary raw materials.

Few, if any, customers care that they are

buying a product that has been blended in this fashion. Moreover, a large portion of secondary alloy magnesium is made to meet the same ASTM or customer specifications as primary alloy magnesium. These secondary products are put to the same end uses as primary magnesium.

Because primary and secondary alloy magnesium are fungible products, they are highly interchangeable. Even the most demanding end users such as the big three automakers see the two types of magnesium as fully substitutable.

Primary and secondary alloy magnesium are sold for the most part directly to end users across a full common range of applications. Producers of primary alloy magnesium typically recycle magnesium scrap for their customers of alloy magnesium. We use the same machinery, equipment and employees to cast primary and secondary alloy magnesium and, as I mentioned a moment ago, generally combine primary and secondary materials into the same alloy magnesium ingot.

Because primary and secondary alloy magnesium are virtually identical products used interchangeably for the same purposes, neither consumers nor producers perceive them to be different

products.

As one would expect given the fact that primary and secondary alloy magnesium are close substitutes, prices of primary and secondary magnesium track each other very closely.

The issue of cast versus granular is equally straightforward. The chemical composition of cast and granular magnesium is the same. Magnesium is produced in a continuum of forms and sizes and there is no clear dividing line between cast and granular magnesium in terms of size. There is a significant overlap in end uses between cast and granular magnesium, as both types of magnesium are used by the desulfurization, metal reduction and chemical segments of the market.

In the desulfurization segment of the market, both cast and granular magnesium are purchased virtually interchangeably. Grinders in particular can use either cast or granular magnesium interchangeably in their production processes. Cast and granular magnesium are both sold to end users which use both types of magnesium for the same purposes.

Producers of cast and granular magnesium use the same production facilities, processes and employees, at least up to the grinding stages.

Producers of cast magnesium also make granular magnesium.

Producers of reagents for iron and steel desulfurization perceive cast and granular magnesium as essentially the same product for their purposes. They purchase and finish grind a wide variety of forms and sizes of magnesium.

And, finally, the prices for cast and granular magnesium are highly correlated.

Thank you for the opportunity to appear before you today.

MR. NARKIN: I'm Steve Narkin with King & Spalding.

In considering the legal significance of what you just heard, please keep in mind three points. First, magnesium is a classic continuum product. The magnesium content of the product ranges from 50 percent up to nearly 100 percent, with no break point along the way. The sizes, shapes and forms vary enormously with no break points there either. The raw materials used to make magnesium range from 100 percent primary to 100 percent scrap, with a range of blends in between. On each metric, there is no clear dividing line.

Second, the scope of investigation here is

different from prior cases in ways that matter to your analysis of pure and alloy magnesium. In this case, unlike previous cases, secondary magnesium is included in the scope of investigation. In prior cases, the only domestic product used by aluminum alloyers and desulfurizers was pure magnesium. In this case, these industries use pure magnesium made by U.S. Magnesium but also alloy magnesium made by domestic producers of secondary material.

China likewise is supplying alloy magnesium to these industries. Unlike the domestic secondary producers, they make pure magnesium but this is subject to antidumping order. As experience has shown, it has been very easy for them to supply alloy product to these industries instead.

Third, the commission's like product determinations are based on the facts and the facts in this case are clear. If you were writing on a clean slate, which you are, because the commission's like product determinations are based on the evidence before it in a particular case, these issues wouldn't even be close calls.

To be sure, the foreign producers would have you believe that the issue of pure versus alloy is essentially settled and the commission need not think

seriously about what the evidence shows in this case, but that's not what the law contemplates.

Nevertheless, you should consider commission precedent on this issue because when you do it becomes even more apparent that the evidence in this case should lead the commission to the conclusion that pure and alloy are a single like product.

Since the first magnesium case came before the commission in 1991, some things have changed and some things haven't. Then, the core production processes involved in the production of primary pure and alloy magnesium were the same. Then, the process of producing alloy products from pure magnesium was not costly and it added little value. These were important reasons why the commission found at that time that pure and alloy were the same like product. And these things are just as true now as they were then.

The physical characteristics of pure and alloy haven't changed either. The commission correctly observed in that first case that the physical characteristics of the two types of magnesium were similar. Other things have changed, though, and they involve matters that are important to the like product inquiry.

Let's go back into the history a little bit.

As the petition explains, the commission's initial finding that pure and alloy magnesium were a single like product was overturned by a binational panel. There were essentially two grounds for the panel's decision.

First, the panel said that although the commission had properly found that pure and alloy magnesium were not used interchangeably, the commission didn't draw the appropriate conclusions from that finding. The panel suggested that this finding compelled the commission to find that pure and alloy magnesium were separate like products.

Second, the panel rejected the commission's finding that the prices of pure and alloy magnesium were correlated. In the panel's view, the data didn't show prices moving in the same direction at the same time or to the same degree.

We take issue with what the panel did and so did the commission. The commission has never found that interchangeability is a requirement for a finding of a single like product. In fact, the commission has said precisely the opposite, citing the legislative history of this statute. But let's put that aside as it is ultimately not important in defining the like

product in this case.

The panel decision and a subsequent decision by the commission in 1995 finding two like products is nevertheless important because you can't read it without recognizing that the evidence on interchangeability and price in this case should now lead the commission to find a single like product.

On the issue of interchangeability, the facts are very different than they were before. There is now substantial interchangeability among consumers that account for over half the market. Here, the degree of interchangeability actually goes far beyond what the commission has deemed sufficient to support a finding of a single like product in cases involving other products. Some of these cases are discussed in the petition and, in fact, this particular case is even stronger on that point.

As for price, the prices of pure and alloy magnesium have been moving in the same direction at the same rate for some time. That is, they have been moving in lock step down. The evidence in the prior cases is nothing like that. Thus, all of the evidence is of one piece.

There is substantial interchangeability between pure and alloy magnesium, the prices of the

two types of magnesium move in tandem, and they move in tandem because they are being sold into the same markets to the same customers for the same uses.

Let's now turn to the issue whether primary and secondary magnesium are the same like product. This is a case of first impression. No prior case involved true secondary magnesium and prior cases did not include such magnesium in the scope of investigation.

You can find some discussion in prior cases of what was called secondary magnesium, but this discussion related to material quite different from secondary magnesium as defined in this case and as understood by the industry.

This material was recycled aluminum cans which contained some magnesium, but the magnesium content of aluminum cans is not recovered, recycled or sold as magnesium. The commission was certainly correct in stating that this material competes with aluminum and not with magnesium and that it shouldn't be included in the same like product as magnesium.

Secondary magnesium as defined here is very different. It is in fact magnesium made from magnesium scrap that is recycled. As Dr. Kaplan said, you just can't distinguish this product from primary

magnesium in any significant way.

Let's return briefly to a point that I made about secondary magnesium at the beginning because it is important to your analysis of pure versus alloy. As I said earlier, domestic producers of secondary magnesium supply aluminum alloyers with alloy product, hence it is irrelevant to your like product analysis that U.S. Magnesium supplies that industry with pure rather than alloy product. In truth, this only accentuates the fact that pure and alloy are interchangeable from the standpoint of those consumers.

You should also recognize that U.S. Magnesium's sales to this market are pure magnesium simply because that is what it has historically produced to serve the needs of that industry.

The Russian producers are also supplying pure magnesium to serve those markets. Please keep the following point in mind: if the commission were to treat pure and alloy as separate like products and were to make an affirmative determination for imports of Russian pure but a negative determination for Russian alloy, you would see a surge of Russian alloy imports, just like what happened in the case of China

in the aftermath of the 1995 case.

Hence, a finding that pure and alloy products do not compete would produce results showing that they do compete. The potential for such an illogical outcome is yet another reason why the commission should not treat pure and alloy magnesium as separate like products in the first place.

Finally, as to cask versus granular magnesium, the commission decided less than three years ago that they are a single like product. Nothing has transpired since that time that should lead the commission to reach a different decision here. The commission noted that pure magnesium is produced in a continuum of forms and sizes without a clear dividing line between cast and granular. It also found that shipments of cast and granular to the desulfurization, metal reduction and chemical segments of the U.S. market constitute a significant overlap in end uses.

On interchangeability, the commission found that desulfurizers purchase cast and granular interchangeably. It also found that grinders use either cast or granular in their production processes and have substituted purchases of domestic cast with important granular magnesium. The commission

concluded that these constituted significant overlapping channels of distribution.

On consumer and producer perceptions, the commission concluded that these facts showed that the market perceives cast and granular as the same product.

Finally, on price, the commission found that the premium that granular magnesium once commanded over cast magnesium had disappeared. The evidence in this case on these points will be substantially the same and the commission's like product finding on this issue should likewise be the same.

Thank you.

MR. BUTTON: Good morning. I am Kenneth Button, Senior Vice President of Economic Consulting Services, LLC. I am presenting testimony on behalf of the Petitioners regarding the injury to the U.S. magnesium industry caused by reason of the less than fair value imports of magnesium from China and Russia.

I am accompanied by Jennifer Lutz, Senior Economist at Economic Consulting Services.

In my testimony, I will address the conditions of competition, the impact of the subject imports in causing injury to the U.S. industry, and

the threat of further injury to the industry.

Although the commission is familiar with the conditions of competition in this industry from the commission's work in prior investigations, I will briefly note some that are the most important.

First, demand for magnesium is a derived demand associated with the demand for downstream products. In these uses, the demand for magnesium tends to be inelastic. A reduction in the price does not materially increase the demand for magnesium. Of course, among substitutable magnesium products such as alloy magnesium versus pure magnesium used by the aluminum alloyers, a reduction in the price of alloy magnesium such as that offered by the Chinese exporters, increases the demand for alloy magnesium and reduces the demand for pure magnesium, but with no net change in total magnesium demand.

Second, the electrolytic cells used by electrolytic producers such as U.S. Magnesium and the Russian producers will deteriorate if they are shut down, and the cost of rebuilding them is indeed prohibitive. Thus, to be cost effective, producers must maintain continuous production.

In addition, the high fixed costs involved in magnesium production require a high level of

capacity utilization for operations to be economically viable.

Therefore, in the face of price competition, a producer tends to cut price rather than to reduce production volume.

Third, the magnesium imported from China and Russia is a close substitute for U.S. produced magnesium. With respect to all material aspects of product chemistry, form and quality, magnesium from either country competes directly with domestically produced magnesium.

U.S. Magnesium is aware of customers which buy magnesium from U.S. Magnesium as well as from both the Chinese and the Russians for the same applications.

Fourth, reflecting the fact that magnesium is a commodity product, the market for magnesium products is extremely price competitive. Because the chemical and the physical specifications of the domestic product and imported product are comparable, customers focus on price in the selection of a supplier.

Fifth, U.S. Magnesium and the producers in China and Russia can easily switch production between pure magnesium and alloy magnesium to suit the

producer's commercial interests. Thus, the relative proportions of pure magnesium and alloy magnesium exported by the subject countries can be altered easily and swiftly to conform to commercial interests.

This is most obviously clear in the ability of the Chinese producers to switch their production from pure magnesium to alloy magnesium for the U.S. market.

Finally, there is a large global excess capacity, primarily because of the rapid expansion of the Chinese magnesium production capacity. China alone is reported to have a capacity of 700,000 metric tons, which is almost twice global magnesium demand.

Let me turn to the subject imports into the United States. There is no doubt that the volume of subject imports from China and Russia is significant and rising. As you can see in my Exhibit 1, in the year 2000, the cumulative volume of alloy magnesium from China and pure and alloy magnesium from Russia totalled 20,400 metric tons. That grew to almost 35,000 metric tons in 2003, an increase of 70 percent.

The Chinese and Russian share of total U.S. imports rose from 25 percent in 2000 to 50 percent of the total in 2003.

As shown in the confidential data in

Petition Exhibit 25, these imports more than doubled their share of U.S. apparent consumption over the 2000-2003 period.

Examining the Chinese and Russian imports separately, the conclusion is the same, that imports from each country are large and have increased greatly. Over the POI, imports from China grew by 93 percent and imports from Russia increased by 59 percent.

The imports from China and Russia achieved this rapid increase in volume and market share by selling at low prices which had the effect of depressing domestic prices. The subject import AUVs, CIF duty paid fell sharply during the POI, as clearly shown in our Exhibit 2. The Russian alloy magnesium AUV dropped from $1.60 in year 2000 to only 86 cents in 2003, a fall of nearly one-half. The Russian pure magnesium AUV fell from $1.09 in 2000 to 87 cents in 2003, a drop of one-fifth. The Chinese alloy magnesium AUV, already very low at 92 cents in year 2000, declined to a still lower 84 cents in 2003.

What is most telling in this exhibit is that the falling subject import AUVs converged on the extremely low Chinese alloy magnesium price. The fact of the convergence of the Russian pure magnesium AUV

with the Chinese alloy magnesium AUV is not a surprise, as it reflects the market reality that the Russian pure magnesium is sold in direct competition with the Chinese alloy magnesium to many of the same aluminum alloyer customers.

The depressing nature of the subject import prices is also reflected in the fact that the subject import AUVs undersell the AUVs of non-subject imports.

As shown in Exhibit 3, the Russian pure magnesium AUV is far below the AUV of the non-subject pure magnesium imports. Similarly, in Exhibit 4, you see that both the Russian and the Chinese AUVs for alloy magnesium are well below the non-subject import AUV for alloy magnesium.

I believe that the commission will find in its confidential data that the subject imports are also underselling domestic magnesium. As shown in Petition Exhibit 26, the Russian pure magnesium AUV is significantly below the average prices of U.S. Magnesium for pure magnesium products. Similarly, the import AUVs of the Russian and Chinese alloy magnesium are below the prices that U.S. Magnesium realizes for its alloy magnesium sales.

The Commission should not expect to see the subject imports underselling margins continue to

expand over time as the subject import prices fall.

As a commercial reality, U.S. producers are forced to cut prices in order to remain sufficiently competitive with the subject imports so that the U.S. producers can maintain their sales volume. If they lose sales volume, they have to build inventory or shut down electrolytic cells, which is prohibitively costly. Therefore, the commission will find that U.S. prices have been forced down drastically by the subject import underselling.

The effect has been that U.S. Magnesium's revenues have been pushed below its costs. The result has been financial losses that threaten the survival of that company. As you are aware, the company's predecessor, Magcorp, was forced into bankruptcy in August of 2001. As the successor company, U.S. Magnesium was working to complete the transition out of bankruptcy in 2002 and 2003 at a time when the volume of imports from China and Russia surged and their import prices fell to historical lows.

It has been a very difficult time for the U.S. industry. Nonetheless, as you have heard Mr. Legge describe, U.S. Magnesium persevered in a plant modernization program. Although the scope of the program had to be cut in half because of the poor

market conditions caused by the combination of imports and softer demand, the program has significantly improved the company's operating efficiency, reduced its costs and improved environmental performance.

The worsening market conditions caused by the intensified flow of subject imports have prevented U.S. Magnesium from being able to generate the cash flows or raise the capital necessary to implement the rest of the modernization program.

As provided in the antidumping statute, this is a stark example of "actual and potential negative effects on the existing development and production efforts of a domestic industry."

During the program's M cells construction and start up period in 2001 and 2002, U.S. Magnesium did face some reductions in production volume. However, even with its available production volume, U.S. Magnesium suffered major lost sales and huge lost revenues, as described in the petition.

Let me note that in the magnesium industry losing a sale does not normally mean a reduction in total shipment volume. It does mean that having lost a sale at a key customer U.S. Magnesium must seek another buyer for that volume, normally at a lower price. The U.S. producer may even be forced to look

overseas to an export market to ensure that volume is fully placed.

As the commission reviews the responses by customers to the commission's faxed lost sales and revenue questionnaire, I urge the commission to study the detailed narrative in the lost sales and lost revenues section of the petition so that the customer responses can be understood in the proper context and with an appreciation of the dynamics of the magnesium market.

What you will find is detailed evidence of how the imports from China and Russia used low prices to expand their sales volume and market share.

In your analysis of the aluminum alloyer segment of the market, you should also see the prevalence of head to head competition between U.S. Magnesium and Russians selling pure magnesium on the one hand and the Chinese selling alloy magnesium on the other.

You will find evidence that over the POI there has been rapid consumer acceptance of the Chinese alloy magnesium as a direct substitute for pure magnesium.

As Dr. Kaplan has testified, the reason that aluminum alloyers began using alloy magnesium is that

the Chinese producers who previously sold pure magnesium to these aluminum alloyer customers were blocked by the U.S. antidumping order on Chinese pure magnesium.

In an effort to circumvent the intent of the order, the Chinese began exporting alloy products which are fundamentally just magnesium and aluminum. The aluminum alloyers found that buying the Chinese alloy magnesium was simply a low cost way of getting the Chinese magnesium content that had been cut off by the dumping order.

You can see this circumvention effort quite clearly in the U.S. import volumes for China, which are shown in our Exhibit 5. You will note that after imposition of the antidumping order on Chinese pure magnesium ingot in 1995, China began to export large quantities of pure magnesium in granular form and also significant but smaller volumes of alloy magnesium ingots.

The Chinese granular magnesium shipments increased rapidly until the U.S. industry filed an add petition in October 2000, at which time the Chinese granular pure imports essentially ceased, but the volume of Chinese alloy magnesium imports accelerated.

As Dr. Kaplan described, the sale of

magnesium alloy to the aluminum alloyer segment of the market did not originate with the Chinese. U.S. producers of secondary magnesium have been for years selling the aluminum alloyers certain magnesium alloy products, such as the 90/10 product, which is 90 percent magnesium and 10 percent aluminum. The low priced Chinese magnesium alloy therefore has been depressing the prices to the aluminum alloyer segment for both U.S. Magnesium's pure magnesium sales and the secondary producer sales of alloy magnesium.

Although I have been focusing on the situation of the current producers in the U.S. industry, the commission should not lose sight of the fact that Northwest Alloys was a producer during 2000 and 2001 when it closed in the face of the same difficult market conditions that led Magcorp into bankruptcy. Therefore, from the perspective of the U.S. industry as a whole, the commission should acknowledge that the declines in production capacity, production volume, employment and shipment volume for the U.S. industry as a whole have been substantial during the POI.

The commission should also appreciate that the U.S. producers of secondary magnesium have also suffered lower prices on the secondary alloy products

that they sell to aluminum alloyers, desulfurization customers and die cast customers.

The domestic industry is also clearly threatened with additional injury if the dumped imports in the subject countries are not halted. Prices continue to decline. The financial condition of the U.S. producers continues to be precarious at best. The commission will find that the statutory criteria for the threat determination are met.

The subject imports are rapidly increasing, both in absolute terms and in their market share. The subject import prices are low and falling and undersell the domestic producers and thus have a serious adverse effect.

There is excess capacity in both China and Russia. In China, the expansion of the Chinese magnesium capacity has been absolutely explosive. China has the world's largest magnesium industry and has vast capacity and is continuing to bring new capacity on line.

China's estimated 700,000 metric tons of capacity is equal to almost twice global demand. The Chinese industry has made it quite clear that the U.S. is a priority market for the continued expansion of its magnesium exports.

There is no doubt that further dumped imports from China and Russia are imminent and will occur unless the antidumping order is issued.

Additionally, as Mr. Legge has explained, U.S. Magnesium has developed a new modernization plan that builds on the technical and engineering success of the initial program. The new plan presents a realistic blueprint permitting U.S. Magnesium to expand into being a cost competitive producer, capable of competing with any fairly traded foreign supplier.

However, the dumped imports from China and Russia have depressed prices and have taken volume away from U.S. producers to such a degree that U.S. Magnesium must have doubts about its ability to realize the benefits of the capital expenditures required for this new phase of the plan.

Clearly, U.S. Magnesium cannot proceed with the plan unless antidumping discipline is placed on these unfairly traded imports so that market conditions can improve. Indeed, new plans aside and despite the efficiency gains achieved, the very existence of U.S. Magnesium is at serious risk unless the unfair import pricing is stopped.

Thank you. That concludes my testimony.

MR. DORN: Just a couple of couple of brief

points.

I would like to emphasize the evidence of lost sales and lost revenues that are contained in the petition starting at page 71. In all of my experience in filing petitions, I have never seen so much evidence presented regarding specific examples of lost sales and lost revenues. And not only is that important on the causation issue and the adverse volume and price effects, it is also germane to the consideration of the like product as you see who we are losing some of those sales to and why we were having to lower our prices in the aluminum alloying segment of the market.

Finally, one of the witnesses read from a recent American Metal Markets article about the interaction of Chinese alloy and pure magnesium in the alloying segment. I would like to read from another article from November of 2002. "The big aluminum companies are looking at Chinese alloy as an alternative right now. The big players like Alcoa and Alcan are switching to take Chinese AM50A alloy, for example. The Chinese have figured out that this way they can avoid the duty, one magnesium trader said."

And given that evidence, I think it would be a big mistake and contrary to the intent of Congress

to consider pure and alloy as separate like products and ignore the adverse impact that imports of Chinese alloy are having on U.S. Magnesium's sales of pure magnesium in these market segments.

That concludes our presentation.

MR. CARPENTER: Thank you very much for your presentation and we will make sure that the slides from Mr. Legge and Dr. Button are incorporated into the transcript.

At this point, we will begin with the staff questions, beginning with Mr. Fischer.

MR. FISCHER: Good morning. Fred Fisher, Office of Investigations. Thank you for your testimony.

Mr. Dorn, you have requested that the commission collect data for four years going back to 2001. The commission traditionally will collect three years of data and I wanted to get your rationale, your reasoning for that request.

MR. DORN: Well, we appreciate very much the commission's questionnaires collecting data for 2000. I would suggest it's not that burdensome on the industry since if we had filed at a different point in time you would be collecting data points for two interim years and so this way you're only collecting

data for four data points.

But going to your question, there are really two reasons that we think that 2001 is not a representative base year in doing trends analysis.

First, as you've heard this morning, U.S. Magnesium, its predecessor Magcorp, filed for bankruptcy in 2001 and, second, as Mr. Legge explained, the company had begun its first phase of its modernization and expansion project with the M cells and so there was a transitional period in 2001 in converting from the old cells to new cells which resulted in a drop in capacity.

If you look at the capacity data for 2000 and 2001, that's very evident, so we think that 2001 is an aberrational year in conducting trends analysis and therefore to have a fair picture of the current condition of the industry it would be much more useful to look at 2000 as the base year.

MR. FISCHER: Thank you.

Mr. Legge, you had mentioned in your testimony that U.S. Magnesium's output was constrained from March 2001 to September 2002. Was that fact known to the industry?

MR. LEGGE: Certainly it was. It was known to our entire customer base because when we began that

reduction, a big thought was to servicing the customers and maintaining adequate inventory levels and so forth, so we had announced what we were doing to our entire customer base. And throughout the construction of the M cells and the modernization, we continued to update customers on the progress of our conversion.

MR. FISCHER: When did Dow Chemical leave the industry, stop producing?

MR. LEGGE: 1998.

MR. FISCHER: And, Mr. Legge, in your testimony, you also stated that Northwest Alloys closed their production facilities, I believe you said it was October 2001 and you had said a reason was because of imports. Can you provide the commission in a post-conference brief any information regarding Northwest Alloys in connection with imports specifically from China and Russia?

MR. LEGGE: We certainly can.

MR. FISCHER: Mr. Kaplan or the panel in general, are you aware of any imports of secondary magnesium from China or Russia since 2000?

MR. KAPLAN: Not at the current time.

MR. DORN: If I could just add, that's something, of course, that the commission will perhaps

get information about as it receives responses from foreign producer questionnaire

MR. FISCHER: Likewise, are you aware of any imports of granular magnesium from Russia?

MR. KAPLAN: The Russians do have a granular industry, but I'm not aware of any imports in recent times.

MR. BUTTON: Ken Button. Census Bureau import statistics covering granular product did not show imports from Russia, but, as Dr. Kaplan said, we are aware the that Russian industry does produce the product.

MR. FISCHER: I'm just asking in general, U.S. Magnesium being in the market, if you're aware of it and you see its presence.

Mr. Kaplan, again, you may be able to answer this question, but it's open to the panel, of course. Does U.S. Magnesium produce any alloy magnesium intentionally that does not meet ASTM spec?

MR. KAPLAN: Not at the current time. No.

MR. FISCHER: Are you aware of any Chinese or Russian producers or any other global producers that intentionally produce an alloy that doesn't meet an ASTM spec?

MR. KAPLAN: The secondary industry in the

United States produces a non-spec ASTM alloy. It's not easy to tell from the imports whether some of the Chinese or Russian alloy is or is not ASTM spec.

MR. FISCHER: It's a concern with imports from China because my understanding is, the way Commerce has established the scope on the pure magnesium imports from China is that any alloy that comes in that doesn't meet an ASTM specification would be covered by that current order. Is that a correct assumption?

MR. DORN: That's correct, and it is our understanding and belief that all of the product coming in from China today is entered as meeting ASTM specs in order to avoid the very high anti-dumping duties on non-ASTM spec alloy magnesium.

MR. FISCHER: Just one final question, Mr. Dorn, are you aware of any anti-dumping duty orders in third countries on imports of pure and alloy magnesium from Russia and then alloy magnesium from China? If you don't know now, if you could provide any additional information in your post-conference brief; thank you.

MR. DORN: I think we have some information on that in our petition, and we'll update that and provide more information, to the extent it's

available.

MR. FISCHER: Thank you.

MR. CARPENTER: Mr. Sultan?

MR. SULTAN: Mr. Dorn, I just want to clarify something that you said in your opening statement. I think you referred to the fact that Commerce's scope in this case is unprecedented in that it encompasses both pure and alloy.

Have we actually seen Commerce's initiation notice? I mean, do we know whether there's going to be one or two classes or kinds of merchandise?

MR. DORN: I took a leap of faith, Mr. Sultan.

MR. SULTAN: Okay, thank you.

MR. DORN: It's my understanding that the Commerce is happy with our scope definition; but you're right, we haven't seen it in the formal document, yet.

Of course, there have been cases that include pure and alloy before within the same scope. In fact, the original case against Canada involved pure and alloy; and the Commission initially found that pure and alloy were one like product.

What I was trying to say in my opening statement is that what's different about this case is,

one, it includes secondary. That's the first time it has done that. Second, it's the first time where it's included pure and alloy in both cast and granular forms. So those are the two differences from the prior cases.

MR. SULTAN: Thank you; I have several other questions which go to the like product issue. Is there any evidence of two-way inter-changeability between pure and alloy magnesium; or are we only talking about one-way substitutability of alloy being used in certain pure applications?

MR. DORN: We're really talking about generally one-way substitutability, with the exception that it's possible for some end users to buy pure and to add the alloy elements themselves. So you could consider that a form of substitution in the reverse direction.

MR. SULTAN: Okay, the domestically produced alloy magnesium that is sold to aluminum alloyers and also to producers -- I think it's de-sulphurization re-agents -- is that made only by secondary producers, or are there also sales of primary production for those end use applications?

MR. DORN: Well, as you know, there's only one primary producer, and that's U.S. magnesium. It

makes pure and alloy magnesium. That end-use segment is interested in the magnesium content of the product. It's not interested in any alloying elements.

So U.S. Magnesium has the choice, and it sells pure magnesium to that end-use segment, because that's what the customer wants.

A producer of secondary magnesium is only recycling magnesium alloy-based scrap. So it doesn't really have the capability of making pure magnesium. They can only make alloy magnesium. So, of course, for them to serve that end-use segment, they have to sell alloy magnesium.

MR. SULTAN: What is the breakdown between primary and secondary producers in the production of alloy magnesium? What I'm really trying to get at is, how significant are secondary producers in this market?

MR. DORN: Well, we have some data in our petition, which is from the U.S. Geological Survey; and off the top of my head, I think we're talking about 20,000 metric tons, in that area of production of secondary alloy magnesium.

As you've heard, the capacity of U.S. Magnesium for producing both pure and alloy is 43,000 metric tons; and I believe the break-out between pure

and alloy is confidential, but it's in the questionnaire response, of course.

MR. SULTAN: Okay, I have several more questions, if you don't mind. Is there any difference between the Chinese alloy product that is used in these traditionally pure applications and the domestic alloy product? I mean, are the products different in any way?

MR. DORN: They're not supposed to be. They're both made to ASTM specifications, so they should be identical.

MR. SULTAN: Just a couple more question; this question goes to the issue of cumulation. Are you aware of any other cases in which we've been asked to cumulate, for lack of a better term, different groups of products? In other words, there's not perfect overlap between what we're seeing coming in from Russia and the scope from China. I mean, I understand what your argument is on the like product, but it's not the same universe from the two countries.

MR. DORN: I hadn't looked at that precise question; but, of course, the cases talk about only a reasonable overlap. Assuming that the Commission agrees with us and considers pure and alloy magnesium to be one like product, we're certainly going to have

a reasonable overlap, because you'll have the same like product being sold by both countries.

MR. SULTAN: One final question, please; I noticed in the data on import pricing in Exhibit 17 of your petition, it seems to show a spike in prices for Russian alloy in 2000. Can anyone tell us what that was all about?

MR. DORN: I'm sorry, is that Exhibit 17, did you say?

MR. SULTAN: Exhibit 17, I think the second and third pages -- it's also on Exhibit 4 of your exhibits for the hearing.

MR. BUTTON: Ken Button -- we don't know specifically why that occurred in terms of the specific commercial sales. But we do note that if you look at the volumes shown in our attachment to Exhibit 4 here that we provided you today, that these do involve major volumes.

In the second quarter of 2000, it's over 1.3 million pounds, 3 million pounds the next quarter. We don't know exactly why that occurred, but it did. They then dropped, but they have fallen since, too, in price.

MR. SULTAN: Thank you very much; that's all I have.

MR. CARPENTER: Mr. Benedetto?

MR. BENEDETTO: Thank you all for your testimony. If any of my questions touch on any business proprietary information, please feel free to tell me, and then maybe follow-up in the brief.

Let me clarify an impression I had. An impression I had from your testimony was that alloy used to be more expensive and pure, but that alloy is actually pulling down the prices of pure now below the old levels of pure. Is that a correct impression?

MR. BUTTON: I'll let the members of the industry comment. But one of the things we're saying is that because the Chinese alloy has entered the market, it is being sold to both the traditional users of pure and the traditional users of alloy product.

Thus, it is there as an alternative to those buyers of either pure magnesium in the case of U.S. Magnesium's sales to the aluminum alloyers; or among the die casters, it is becoming increasing available to the die casters. As noted by Dr. Kaplan, the big three auto producers are -- excuse me, there are major consumers who are using them.

So what we've found is the Chinese alloy product has pulled down the prices of others, simply because it offers a substitute product in both major

use segments.

MR. BENEDETTO: But alloy used to be traditionally more expensive than pure. Is that correct?

MR. BUTTON: Yes, traditionally, the alloy product was higher priced. I can let Dr. Kaplan comment.

MR. KAPLAN: Historically, depending on which period you look at, alloy prices were generally below pure prices.

MR. BENEDETTO: Oh, they were below; alloy was less expensive?

MR. KAPLAN: Alloy was less expensive through most of the 1980s and early 1990s. With all of the disruptions in supply with respect to imports, it's fluctuated. But as Ken said, now they tend to converge.

MR. BENEDETTO: Another impression I have is that the distinction between pure and alloy, primary and secondary, and cast and granular, maybe used to be more important to consumers, but they're not so much any more. When did this change occur, if my impression is correct? I mean, did it occur in the period of our investigation or before that?

MR. DORN: Well, the recycling of scrap has

become more prevalent in recent years, which has meant there's been more production of secondary alloy magnesium; and that has resulted in more interaction between alloy magnesium and pure magnesium among U.S. producers.

Because in the past, you didn't have much, you know, secondary production. But today, you have a lot of secondary production, and all that secondary production is alloy. If they're going to sell into the aluminum and desulf segments of the market, which is a majority of consumption, they've got to sell alloy. That's all they've got.

So there's more competition on the domestic side between pure and alloy today than in the past; and as a result of the anti-dumping order against pure magnesium from China, you have a lot of that, and we'll find out from the questionnaire responses if they're filed, how much.

But a lot of the imports from China of alloy magnesium are being sold in the aluminum alloy segment. So there you have more competition between pure and alloy, as well. So there has been a change and increase between pure and alloys in the last few years.

During the case that the Commission

considered on Granular Magnesium from China, there, the Commission collected a lot of evidence about changing patterns in terms of what the grinders were using to create their re-agents for steel de-sulphurization.

Historically, they intended to use ingots and grind the ingots. But when the ingots from China became subjected to very high anti-dumping duties, they had the option of importing chips and then grinding the chips. They can use either ingot or chips to make their powders. So there was more competition in recent years between cast and granular in that segment of the market. Ken, do you want to add something?

MR. BUTTON: Yes, we would encourage you to look at the competition and lost sales and revenue at certain large customers and certain bell weather customers, and you would see that when those aluminum alloyer customers started to use the Chinese alloy product, you're noting here a significant market shift.

MR. BENEDETTO: So you're saying this happened during our period of investigation then?

MR. BUTTON: Yes.

MR. BENEDETTO: Okay, and I guess that's

related to my next question. How long have the prices been going down? Does this pre-date our investigation period; or did it start since 2000?

MR. KAPLAN: Do you mean --

MR. BENEDETTO: Right, so how long have prices been going down? Have they been going down since before 2000 or since 2000 only?

MR. KAPLAN: Prices have never gone in only one direction. They have cycled through supply and demand issues. The downward trend that we're seeing now has been occurring since approximately 1998, 1997.

MR. BENEDETTO: And is it related to the same issue, the dumping that you allege from China and Russia?

MR. KAPLAN: Yes.

MR. BENEDETTO: Are there any other issues involved, or is that the primary issue?

MR. KAPLAN: Demand is slightly up, so that's the main issue, the supply of unfairly traded material.

MR. BENEDETTO: Has there been any price movement in 2004, up or down?

MR. KAPLAN: We'll address that in, I think, our post-hearing brief.

MR. BUTTON: This is Ken Button. I just

want to make a comment on that, since I suspect we may be hearing something from the Respondents. You know, the case was filed on February 27th. If you look at the *Metals Week* pricing, the various indices in the preceding weeks, it was flat. Then the most recent one, it did spike up right after the announcement of the case.

MR. BENEDETTO: Okay.

MR. KAPLAN: I should also point out that those are spot prices, the petitioner has contract prices, so it has little or no effect.

MR. BENEDETTO: Is certification an issue at all in purchasing magnesium?

MR. KAPLAN: The process with most customers is more a qualification than a certification, particularly with respect to the aluminum industry. In the automotive industry, there are some fairly rigorous qualification procedures that you have to go through, and they have to be approved based upon more than just how an ingot looks.

MR. BENEDETTO: Does anyone have anything else to add to that?

(No response.)

MR. BENEDETTO: Mr. Button, you said that demand was inelastic. Is this because magnesium is a

small percentage of the final product?

MR. BUTTON: I can comment and certainly Dr. Kaplan can, as well. Indeed, certainly with the aluminum alloyer segment of the market, the magnesium by weight in alloyed aluminum tends to be in the realm of one percent; for can stock lids, it would be perhaps up to four percent, so it is relatively small.

It is my understanding with respect to die cast, although obviously that's the metal, there's a lot of cost that goes into actually forming and making the product, as opposed to just the raw material that goes into that. I'll ask Dr. Kaplan to go further on that.

MR. KAPLAN: Yes, that's true. I mean, for example, price of magnesium is of no significance to the volume of aluminum cans made each year. They are made, they use whatever magnesium goes with them, and the price of magnesium will never drive the volume of aluminum cans.

In the die casting market, we used to say it was elastic. But the history of the impact of volume versus pricing says that it's not. It says when the prices come down, demand has not significantly gone up on a comparable basis.

MR. BENEDETTO: Has U.S. Magnesium had any

problems supplying any customers with magnesium over the last three or four years? That may be a proprietary question.

MR. KAPLAN: I certainly think we'd like to respond to that in the post-hearing brief.

MR. BENEDETTO: Okay, has U.S. Magnesium traditionally had its primary magnesium compete with other domestic producers secondary magnesium?

MR. KAPLAN: What timeframe are you sort of looking at?

MR. BENEDETTO: Oh, if the answer differs by timeframe, if you could elaborate. Is this something that's relatively recent?

MR. KAPLAN: The secondary magnesium production in the United States has been around for a very long time. As Dr. Button mentioned previously, it does depend somewhat on the amount of scrap. So as the amount of scrap has increased, the volume of material going through the secondary processors has increased. So it has become more significant in terms of market share through time, and it's been around since the 1960s, 1970s.

MR. BENEDETTO: And it's becoming more significant.

MR. KAPLAN: But it is becoming more

significant, because the amount of scrap is becoming more significant, and because the number of pounds of magnesium coming into the old scrap market, old Volkswagen engines and lawn mowers, those are all being recycled now. So it's becoming more often used back into the stream.

MR. BENEDETTO: You said that pricing is based on once yearly annual negotiation. Is that still the case? Has that been affected at all by the alleged dumping?

MR. KAPLAN: Again, I think we'd like to respond to that in the post-hearing brief.

MR. BENEDETTO: That's all my questions; thank you very much.

MR. CARPENTER: Mr. Yost?

MR. YOST: Thank you very much; Charles Yost, Office of Investigations -- like my colleague to the right, I also have a couple of questions to correct perhaps a misunderstanding.

Could you give us a timeline, please, for the conversion to the new cell technology? What I understood from documentation that I read before was, you're going from the IG Farben cells to an Amex S cell to the M cell, the so-called modern cell. Then suddenly I heard about a T cell. What was the impact

of the T cell; why did it come into place; and what effect did it have on your costs?

MR. LEGGE: Starting with the oldest cell technology, which would be the IG Farben cell, which would also be what I would call the first generation cell within our facility, that cell was the mainstay of production from 1972 until, I believe it was, some time in 2002. We took all of those off, and at points in time, we operated up to 90 of those cells.

The Amax sealed cells are the ones that we termed, I guess, an S cell. They first began commercial operation in 1983, and they operated until the 2002 time period. Then we went through those cells, from 2002 into 2003, and systematically rebuilt them as what we had called the T cell

MR. BUTTON: Excuse me, I'm going to interrupt. If you have with you a copy of U.S. Magnesium's questionnaire response and can go to tab one; and the first exhibit behind tab one is a chart which shows month by month during the POI how many cells of each type were in operation, and how one type of cell is removed from operation and another is put in its place. Perhaps if you have that there, it might help inform you while you're hearing these comments from Mr. Legge.

MR. YOST: I try not to bring confidential information down to a public hearing or a conference. I'm trying to get more of a flavor than the exact details; and I still have to read completely the questionnaire response, which I received yesterday.

MR. LEGGE: In any event, the seal cells or S cells, as I said, we operated 30 of those, basically starting in 1983 up until 2002. Then those cells were converted to the T cells, and it was basically the same box with a lot of internal changes that we had developed in what you'd call the third generation cell, which was the M cell.

Now the M cell, the installation of those cells began in April 2001 and finished in 2002. So you can see by this narrative, we had stopped dependence on the IG Farben cells entirely in the spring of 2002, and then all the production we had from that point forward was a combination of the M cells that we were bringing on line plus the S or T cells, as we were converting those. So we were going through a conversion basically of both. But we added the 30 M cells, like I said, over a 17 month period from April 2001 to September 2002.

MR. YOST: Okay, thank you very much -- what I understand is the cell technology was developed to

meet changes under Title 3 to the Clean Air Act. Is that correct?

MR. LEGGE: We made the change to the M cells, contemplating several major driving forces that we were trying to get out of one technology change. Energy consumption was one. Another was manpower.

But certainly, from the very beginning, we were trying to design a cell that would allow us to achieve the MACT standard that at that point in time was being developed by the U.S. EPA, and that was finally signed off in September of 2003.

But we, all along, had targeted air emissions, both from the standpoint of EPA and the State of Utah in the design of the cells. That was one of the foremost targets that we had. Whatever we put in had to achieve all regulations, both Federal and State.

MR. YOST: I have another couple of questions that you can answer in the post-conference brief, if you would. You've indicated that you have some tolling. If you would tell me, you know, who supplies what to whom and so forth in your post-conference, that would be appreciated. The other question concerns, is magnesium anodes included in the scope of this? Okay, if I understand correctly, U.S.

Magnesium supplies magnesium to another company for the production of anodes, or did at some point. I just want to make sure.

MR. DORN: Those should not be included in the questionnaire response, because they're not within the scope.

MR. YOST: Okay, the anodes would not be included.

MR. DORN: That's correct.

MR. YOST: But the supply of magnesium, in whatever form, would be included in either internal sales or transfer or commercial sale?

MR. DORN: Correct.

MR. YOST: Okay, you've indicated that U.S. Magnesium is a successor of Magcorp. What did U.S. Magnesium not purchase out of the bankruptcy, what properties or property?

MR. LEGGE: Yes, the only properties that were not purchased by U.S. Magnesium were the Solar Pond facility at what we calls the Knolls location, which was about 45 miles to the west of the plant. We have two Solar Pond installations, and U.S. Magnesium did not purchase the complex.

MR. YOST: Is the management team the same at U.S. Magnesium as it was at Magcorp?

MR. LEGGE: At the point of the transition, it was the same. It is not now. It's changed subsequently.

MR. YOST: What's the corporate structure now? You've indicated, I think, that Renco Group is the corporate parent. What happened to Renco Metals? Did that disappear in the bankruptcy?

MR. LEGGE: It did. We are an LLC, and Renco was the sole shareholder.

MR. YOST: Okay, and who is the ultimate owner of Renco?

MR. LEGGE: Renco, along with Magcorp, I believe, is still, I guess, in the control of the trustee in the bankruptcy.

MR. YOST: Then what is the nature of the adversary proceeding by the bankruptcy trustee?

MR. LEGGE: I guess the nature of that, it would probably be more appropriate to describe that in a post-hearing brief.

MR. YOST: Okay, I have a further data request. Could you please supply financial statements for U.S. Magnesium and Magcorp that go back through the period that we're looking at, together with any notes in the auditor's statement?

MR. KAPLAN: We'll be pleased to do so.

MR. YOST: Okay, that completes my questions; thank you.

MR. CARPENTER: Mr. DeSapio?

MR. DESAPIO: Vincent DeSapio, Office of Industries -- could someone tell me what the situation is with automotive grade alloy magnesium? At one time, it was my understanding that very little Chinese or Russian alloy magnesium was qualified for use in automobiles. Has that changed as of today?

MR. KAPLAN: As time progresses, more and more sources of magnesium are being qualified by the automotive companies and are being accepted as complete substitutes.

MR. DESAPIO: And that includes much of the Chinese material, I imagine, that has been qualified for use in automobiles?

MR. KAPLAN: I don't know the answer to that, but I'll endeavor to provide it in the brief.

MR. DESAPIO: Lastly, secondary magnesium, how much enters the automotive market? At one time I thought, at least for structural applications, very little secondary magnesium was used because of purity problems. Has that changed or is it still the same, as far as lack of use in automobiles?

MR. KAPLAN: The secondary producers in the

U.S. include people who make non-spec ASTM, which goes to the aluminum de-sulphurization industry. It also includes people who make spec alloy, which goes directly back to the automotive companies.

MR. DESAPIO: So you can use secondary magnesium in automobiles now.

MR. KAPLAN: Absolutely.

MR. DESAPIO: Okay, thank you.

MR. DORN: I might also mention that Exhibit 15 to our petition has an article about the fact that Chrysler Corporation has approved the use of 100 percent recycled magnesium in dye cast production components purchased from its parts suppliers. The date of that article is September 30, 1998. The article goes on to say that Chrysler now joins General Motors and Ford, employing parts made of non-virgin magnesium, in its North American built cars and trucks.

MR. DESAPIO: Thank you.

MR. CARPENTER: Mr. Deyman?

MR. DEYMAN: I'm George Deyman, Office of Investigations. From the point where alloys are added to pure magnesium to make alloy magnesium, how much value added is there?

Now that may be business proprietary. You

can answer that in your post-conference brief. But could you characterize that now as minimal or moderate or substantial, or some sort of adjective as to how much value added there is in producing alloy?

MR. NARKIN: I would point out, however, that as long ago as the first series of magnesium cases, the Commission, itself, found that the value added was relatively small.

MR. DEYMAN: If I could just add one thing?

MR. NARKIN: Yes?

MR. DORN: It is my understanding, and Mr. Legge can correct me if I am wrong, but I think that sometimes some of the alloy elements that are being added, which in a way are substituting for magnesium content in the finished ingot, are less expensive than the magnesium itself. So while there is obviously some additional processing costs involved, from a material standpoint, it may be less expensive. So, at the end of the day, there is not much addition, or, if any, in cost.

MR. LEGGE: Joe is correct on that. What I would add is probably more of the value added comes in, via qualification, meaning if the alloy ultimately is going to General Motors, Chrysler or Ford, there is a lot more effort in value added in qualifying these

alloys for the automotive.

MR. DEYMAN: All right. Page 36 of the public version of your petition indicates that there was a significant gap between pure and alloy magnesium prices early in the period of investigation, a gap that you contend was pulled down by the subject imports.

Why was there a significant gap in prices, even though the value added is small in your characterization? In other words, had prices between pure and alloy gotten out of whack, for some reason, in the early part of the period?

MR. KAPLAN: Well, again, prices have not been steadily flat, or steadily increasing. They have been cyclical; and I think we prefer to address the specific changes in our post-hearing brief.

MR. DEYMAN: Speaking of prices, in Exhibit 23 of your petition, you present an article from *Metals Week*, dated January 19, 2004, entitled: *US Magnesium Prices Still Firming*. And it says: There was more evidence last week that US Magnesium prices are moving up, as several consumers reported having to pay higher prices, etc., etc.

That was before the petition was filed. Can you tell me why the prices were increasing and how

long had prices been increasing, according to *Metals Week*?

MR. KAPLAN: Again, I think we would prefer to address that in the post-hearing briefs since it involves not only *Metals Week*, but also some of our pricing as well.

MR. BUTTON: I would just note that: generally, in talking -- many of these commentaries about how the spot prices are formed, producer comments, and you can see increasing sometimes from a very low base, and prices, indeed, can go up and down. Certainly, there are, within a year, fluctuations in terms of momentary supply-and-demand factors.

We would be happy to provide you the long-term price series; and what we are contending, with respect to the nature of pricing and price depression, as is best indicated by the average unit values of the imports that we showed in the various exhibits, and having underpriced clients with respect to pure magnesium as well. When they come down to a certain level below, for example, US Magnesium's cost of production, a small increase upward is, indeed, an increase, but it is certainly not something which changes the real market position.

MR. DEYMAN: Although specific data from

questionnaires are business proprietary, trends are public, according to our rules. I noticed that your shipments were up in 2003. In fact, they were up over the previous year and up over 2000. What happened in 2003 that caused the increase in shipments? I don't want to get into market share because that could be business proprietary, but shipments, at least?

MR. LEGGE: Well, 2003 was the first year in which we had demonstrated the complete operation of Building 1 and all M-cells and we completed all of what we call the T-cells.

Secondly, I believe that there was an impact on US Magnesium shipments exiting bankruptcy. We started selling to customers that we may not have sold to during bankruptcy; and we started getting increased volume from a variety of customers that maybe brought lower volumes during the period of the bankruptcy.

MR. BUTTON: Indeed, the whole idea was to get shipments and production up in 2003. Indeed, it was the goal. They had been involved in a modernization-transition period since 2001. So, to the extent that they were able to get the newer lower-cost capacity in place, they certainly desired to sell out that volume and indeed would do so.

Perhaps in this case, I would paraphrase

things, with hopefully not too much exaggeration, that this is a: price case. Please be mindful that that is the price at which they are able to sell, compared with their costs and as compared to the import competition. Thank you.

MR. DEYMAN: Mr. Kaplan, you mentioned the selling of magnesium through contracts. In your contracts, and you can answer more fully in the post-conference brief of course, but, in your contracts, is the type of magnesium pure or alloy specified, and the specifications within pure are alloy?

I guess what I am getting at is: If a contract provides for pure magnesium, would you, could you, or have you sold that customer alloy instead?

MR. KAPLAN: There is not really any reason to do that, particularly since alloy is a derivative of pure. So there would be no incentive for us to do that as we have pure material available. The contracts generally specify an alloy type: pure or ultra pure, or AZ91, or combinations thereof. And sometimes, they will specify an ingot size; but, more often, for the aluminum industry, that changes depending on what their particular needs are.

MR. DEYMAN: Very good. Well, thank you. I appreciate your answers.

I have no further questions.

MR. CARPENTER: I have a few questions. I would like to start with Mr. Legge, if I could.

If I understood you correctly, the modernization project that you spoke about began a couple of years ago and then you said that you had to put it on hold. First of all, and I apologize if I missed some of the details of this: The modernization program, did it encompass say a combination of environmental improvements and additions to capacity?

MR. LEGGE: Yes, as I had said at the very beginning, this actually started in 1995. We set up the targets for what the new cell technology would look like, meaning when we put it in, it had to have something like we have now, which is three times the through-put capacity of the old cells.

We targeted a certain electrical-power consumption; and we also, from the very beginning, had targeted a cell that would allow us to meet the MACT standards at what is called the point source, which is the cell.

So we had a goal of meeting all of our environmental and air-emission objectives from the very beginning.

MR. CARPENTER: Did you achieve that

tripling of capacity through the installation of the M-cells, or does that also include the work that you are trying to do with the installation of the T-cells?

MR. LEGGE: I think that maybe I have confused you. We targeted a tripling of capacity per unit cell. In other words, in the same box.

MR. CARPENTER: Okay.

MR. LEGGE: The M-cells take up the same space in our pot line as an IG Farben cell. There were 30 IG Farben cells in a building, and there are 30 M-cells. Our target was triple the through-put of that box, which means the building has three times the output.

Our modernization plan, when we had initially designed it, was such that we would install 60 cells; and we were going to expand to 55,000 metric, which was not a tripling of our old capacity. Our old capacity was something in the low 40,000.

But now that we have found that we can run the M-cells at a higher amperage, then, our expansion plan is basically to go either to 65,000 or 80,000. But, still, that is not a tripling of the plant capacity.

MR. CARPENTER: Okay.

MR. DORN: But just to add to that: In terms

of the period of this investigation, which you are looking at, 2000 to 2003, there has really been essentially no net addition to capacity from 2000 to 2003 using rough numbers without getting into confidential data.

In terms of the trends' analysis, the key point is that there was a loss of capacity in 2001 and 2002 in this transition phase; and in looking at the shipment volumes, for example, one reason that we wanted to use the 2000 as a base year is that is a representative year when the company was in its traditional capacity level; and it would be aberrational to use 2001 or 2002 as a bench mark in reviewing shipments in 2003.

Rather you ought to be looking at the last year at which they were at their nameplate capacity, which was 2000.

MR. CARPENTER: Now when you said that you put your modernization project on hold, what additionally would be involved in completing that project and would that involve, in any way, any addition in capacity if that is not a confidential issue?

MR. LEGGE: When we put it on hold what actually happened is we had designed, for instance,

bus work, it's the aluminum that is required to deliver the power to the cells, we actually designed it to run 60 cells. We had ordered aluminum from an aluminum smelter to build the bus work. So we actually had to go in and tell them to cut the order in half because we were that far along on going all the way to 60 cells.

So that, indeed, was how far along we were at that time. At this point in time, we had an outside engineering firm do complete design drawings for all of the second-cell building; we have had several outside consulting firms come in and look at some of the assumptions that we have made in the presentation of that expansion to our parent company. Those include -- we made assumptions on, for instance: the cost of energy, natural gas and electricity; and we had a firm come in and basically analyze that as a third party.

So that's the stage that we are at in going forward with an expansion.

MR. BUTTON: Let me just summarize some terminology that might help you a little bit in terms of the alphabet soup of what kind of cells we are dealing with. Originally, we were talking about IG cells and S cells. IG cells, in that sense, became M;

and S became T.

So, in 2001, they had a plan to build 60 M cells, but they could only do 30. So they had to keep on line some of the S cells. They then said: What do we do now? We will take a half-way measure. And they applied the parts of the new M-cell technology that they could and put it on to the S platform and got the T. So that was the blend of M cells and T cells that they are currently running.

They are now facing: What can we do? We had originally planned to make 30 more M cells. Well, let's do it but we can even do it in a bigger way. We have two-years' experience in running the M cells; we can take the current M cells we've got and make them better, higher amperage. And we've got an empty building and we can put in a whole bunch of new M cells and raise our capacity to 60,000 metric tons or 73 metric tons of output, a big increase in capacity.

The gain from doing that is lower variable cost in general because the T cells, which are good but not the best, move them out and you make use of this extra brine capacity you have from the pond system, and you then are able to use the extra-casting capacity that you have already got. So there are these fixed costs that you can now spread over a

larger electrolytic production.

So that is the plan that they are facing now: Can they do that?

MR. CARPENTER: I appreciate those details. What I am trying to get at, and I think you partially answered it, there is: If you were to resume this project tomorrow, how long would it take to complete it and what would be the incremental increase in capacity that would be achieved?

MR. LEGGE: If we were to begin tomorrow, we estimate it would take 18 to 24 months, depending on lead times on key components, probably aluminum bus; and secondly, we would have a choice of taking the expansion up to, as Ken just said, either in the 60,000 range or all the way up to was it 73,000 metric, depending really on the condition of the market.

MR. CARPENTER: Okay.

MR. LEGGE: Because it is all in the two buildings, that capacity. It is just the number of cells that you add.

MR. CARPENTER: Good, thank you.

Mr. Legge, how would you respond to Mr. Gurley's comment in his opening statement that US Magnesium is currently at full capacity and is unable

to supply any additional production into the market?

MR. LEGGE: I think that we can give you some details in the post-hearing brief. But I would certainly say that we are operating at capacity; yet, at the same time, we have the ability to take on more customers.

MR. CARPENTER: Could you explain in your brief, then, if you are at full capacity?

MR. LEGGE: I certainly can.

MR. CARPENTER: Again, Mr. Legge, have you had instances in recent months where you have been unable to meet your customers' demands? And feel free to answer that in a brief if it is specific with details.

MR. LEGGE: We can give details in the brief but I would say this: Howard and I have been there for many years and he was vice president of sales and marketing in the 1980s and 1990s at the predecessor, Magcorp, and US Magnesium and we have never failed to deliver on a contract or purchase order.

In the period of investigation, we have negotiated with a customer to push them maybe a quarter but we have not failed to deliver.

MR. CARPENTER: Okay. I would like to shift a little bit towards demand now. Again, Mr. Gurley,

in his comments, asserted that there has been enough swing in demand in 2004. Have you seen an increase in your orders this year?

MR. LEGGE: I would prefer to handle that in a post-hearing brief.

MR. CARPENTER: Thank you. Also, if you want to comment, either in a brief or at this point, I would be interested to know what your predictions are for demand in 2004 and beyond? Is it going to increase or how strong will it be? Also, if you do envision an increase in demand, what is driving that increase in demand?

Dr. Button, if you have comments along those lines, I would appreciate that.

MR. LEGGE: We would be glad to do that.

MR. CARPENTER: Thank you. One final question for Dr. Button. I heard you say that China's capacity is about double what world demand is at this point. Assuming that that is correct, I am wondering why that is? Is China expecting some major increase in world demand, or within their home market?

Do you have any theories about that?

MR. LEGGE: I don't know what the Chinese themselves have in mind in this. I can certainly try to give you some of our thoughts in the brief. I do

think that many Chinese producers, at the same moment, saw export opportunities, such as in the U. S. market and elsewhere; and they, at the same time, managed to build capacity to such that they are now commingling among themselves in an effort to expand their own exports.

And that effect has, for them, supply in China available to push down their own export price. So there may be some fluctuations in their prices based on some of their production costs, like in ferrosilicon that goes up and goes down. They have a lot of capacity and they have got to do something with it.

MR. DORN: It is my understanding that there are about 150 to 200 Chinese producers, none of whom appear to have shown up today or entered an appearance, as far as I can tell.

MR. CARPENTER: Okay. Thank you very much for those answers.

Are there any other staff questions? Mr. Fischer?

MR. FISCHER: Fred Fischer, Office of Investigations. I just wanted to follow up on a comment, a response to a question Mr. Deyman had asked.

And Mr. Button and Mr. Dorn, you have asked us to focus a lot of attention on the lost sales and lost revenue information supplied in the petition and I just wanted to try to square the information contained there with the fact that there was a bankruptcy proceeding and US Magnesium went into bankruptcy; and Mr. Legge, I believe, just intimated that some customers reacted to that factor and US Magnesium may have lost some customers and subsequently gained some customers back after bankruptcy.

If you could just provide any documentation that would help, not only to clarify whether some of these sales were actually lost because of price or for some other reasons, or whether it was related to bankruptcy? If you could just provide some additional information for the Commission on how we could handle and sort through those issues?

MR. BUTTON: We would be happy to provide some additional information, although we ask you to keep in mind a theme: If, indeed, there were non-price factors, which caused customers to turn away from US Magnesium bankruptcy, etc., you would have thought that the competitors would not have needed to lower the prices in order to secure those sales.

MR. CARPENTER: Thank you, again, very much for your testimony and for your responses to our questions.

We will take about a ten-minute recess at this point and we will resume with Respondent panel.

(Whereupon, a brief recess was taken.)

MR. CARPENTER: Please begin, Mr. Leibowitz, whenever you are ready?

MR. LEIBOWITZ: Good morning. I can still say good morning for a few minutes yet. I am Louis Leibowitz of the law firm of Hogan & Hartson, counsel for Alcoa and its subsidiary, which is not in operation -- Northwest Alloys in this investigation.

We have, from Alcoa's standpoint, fundamental disagreements with the case that you have just heard. We think that it does not accurately characterize the current situation or the causes for the situation faced by the Petitioner in this case.

Alco is the world's largest consumer of magnesium. It is a critical alloy element in making certain widely used types of aluminum products. Alco urges the Commission to issue a negative preliminary determination in this case. Such a determination is the only one consistent with the law and relevant precedent regarding this industry which has been here

before.

To my right today is Robert McHale, Vice President for Purchasing East for Aloca Materials Management. He is responsible for North American purchases of magnesium and other materials for Alcoa. On my left is Dr. Paula Stern, who is the chief executive of The Stern Group, Incorporated. She appears as an economic and a corporate consultant on behalf of Alcoa today. Dr. Stern is a former chairwoman of the International Trade Commission and currently serves on the boards of four publicly traded corporations.

My colleague Lynn Kamarck is also available as is Andrew Solikamsk of LECG, who are working with us in this case.

I will talk for just a minute first about important legal and policy issues in the case. Mr. McHale will give Alcoa's perspective of the magnesium market from the point of view of a global consumer of magnesium. Dr. Stern will highlight certain troubling aspects of this case concerning some financial dealings that, we think, do explain any injury that the newly created US Magnesium Corporation LLC may have suffered.

First, a preliminary point about Northwest

Alloys. It ceased production in September 2001. Its closure was due to its position as a global high-cost producer of magnesium. It was especially in difficulty because of energy costs in the Pacific Northwest where its plant was located. It was not closed due to imports of allegedly unfairly traded magnesium from Russia or China. Nor does Alcoa believe that any injury to US Magnesium was due to those imports.

The standard for determination in this case: The Commission should consider all evidence in this preliminary-injury determination under the standards laid down in the American Land case in 1986. Reading that case, rather than all the commentary on it, is sometimes refreshing and instructive. It was a case where the courts affirmed a negative-preliminary determination.

If the Commission finds convincing evidence that there is no injury or threat by reason of subject imports, and no substantial likelihood that evidence of injury would be found in a further investigation, the Commission should close an investigation at the preliminary phase. That is what should happen here. The claims of injury in this petition do not hold up under scrutiny. Based on publicly available

information, as well as information in questionnaire responses, the financial harm experienced by US Magnesium and its predecessor, Magcorp, clearly are not due to subject imports.

The results of an affirmative-preliminary determination in this case would be precisely the unnecessary and costly investigations, an administrative burden, and an impediment to trade that has been noted by Congress in the legislative history of the act that gave rise to preliminary-injury determinations.

The Commission must also examine all causes of injury other than subject imports and must not attribute injury from those other causes to these imports.

Let's move on to some of those issues. First a word about like product. The Petitioners allege, without substantial support, that the like product in this case should consist of all magnesium whether pure, all-spec pure, or alloy. Alcoa disagrees. The Commission has spoken several times on this issue. Ever since 1993, the Commission has consistently ruled that pure and alloy magnesium are separate like products that there is a bright line between them. The 1995 case of magnesium from China,

Russia and the Ukraine provides a clear and cogent analysis.

Now, unlike Petitioners, we do not see a substantial change in the products available since then that would obliterate the bright line that exists. Alcoa's first-hand comments will apply largely to pure magnesium, which is their principal product. But Mr. McHale, I think you will find, is knowledgeable about the market in general.

The Commission should also consider the full picture of US Magnesium's financial condition and that of its predecessors. The causes of Magcorp's bankruptcy and the subsequent creation of US Magnesium are relevant to this investigation. In 2001, the debt issue and payout of dividends were characterized by this Commission as reasonable. Subsequent events have contradicted that assertion.

Since 2001, the trustee in bankruptcy has filed an action against the principal owner of US Magnesium and its parent company, Renco Group, Mr. Ira Rennert and others, alleging that the same transaction that was described in 2001 left Magcorp unable to handle its debt burden. Dr. Stern will discuss this issue further.

But first, I would like to call Mr. Bob

McHale of Alcoa Materials Management.

MR. McHALE: Good afternoon. I am Robert McHale, Vice President of Alcoa Materials Management in charge of purchasing metal raw materials for Alcoa in North America. I have 16 years experience in purchasing magnesium, and analyzing the market for magnesium around the world. Alcoa is the world's largest purchaser of magnesium, and was until two-and-a-half years ago a leading producer of magnesium.

The current anti-dumping case on magnesium from Russia and China is profoundly disturbing to Aloca because it will harm our competitiveness at home and around the world. The case is curious because of its timing. It comes on the heals of significant tightening of the market and threatens a major source of supply. US Magnesium is the only U. S. producer of magnesium and it is now sold out. Having only one supplier would be intolerable. It would require us to explore ways to shift production outside of the United States to maintain reasonable access to world-competitive magnesium supplies.

The current state of the market is that supplies of magnesium are tightening and prices are rising. Not a week goes by that I do not hear about supply disruptions from China. US Magnesium, the

latest incarnation of a company that was once called Magcorp, appears to be seriously undercapitalized. While US Magnesium is a good supplier in terms of product quality and on-time delivery, its posture in this dumping case is not what a good supplier does to its largest customer.

Because of the history of US Magnesium, we are very concerned that any market restriction from dumping duties may be a precursor to the same type of corporate activities we witnessed a few years ago. Let me be specific: As a purchaser of magnesium, Alcoa needs reliable supply at competitive prices. US Magnesium is a major supplier to Alcoa but it does not, in my considered opinion, have sufficient capacity to supply substantially more to Alcoa than it already does.

US Magnesium's behavior, in certain aspects of this business, gives us, at Alcoa, pause. First, US Magnesium's owner, Ira Rennert, has brought distressed companies such as US Magnesium's predecessor, Magcorp; filed trade cases to drive up prices; and then taking money out of these companies. Thus, the benefit of greater revenue from trade cases may not go to the magnesium producer for investment in plant and equipment. By leaving its companies with

insufficient capital, US Magnesium is not likely to improve its competitive position.

Second, US Magnesium has made its own mistakes. Recently, US Magnesium approached my company asking for supplies of natural gas, an important source of energy for their production. They told us that they had failed to hedge their natural-gas positions and were caught short by the current shortages and high-energy prices prevailing in the market. They failed to implement a simple strategy of hedging that would have protected them against increasing gas prices.

Under the circumstances, as we have seen them, any financial injury suffered by US Magnesium in this market is not due to allegedly dumped imports from Russia and China. It is their own mistakes and machinations that account for these problems. I urge the Commission to terminate this case at the preliminary stage and not allow a repeat of the strategy used only a few years ago in this business.

With all these concerns, Aloca relies and will continue to rely on US Magnesium. Indeed, they are a key supplier. We want them to be successful. That is why our purchases from them are so substantial.

Thank you for the opportunity to appear before you today. I will be pleased to respond to your questions.

MS. STERN: I am Paula Stern, former Chairwoman of the U. S. International Trade Commission and current Chairwoman of The Stern Group, Inc. It is a pleasure to have this opportunity to discuss with you the question of an injury alleged by the Petitioner, US Magnesium. No doubt you have received and have reviewed the voluminous records from the past ITC investigations in this industry.

And since 2001, the U. S. Department of Justice, the Environmental Protection Agency and Magcorp's trustee have filed revealing new material in several court actions. I believe that you now have with that material an ample record to conclude, as do I, that there is no reasonable indication that the domestic magnesium industry is injured due to alleged dumped imports from Russia and China.

Indeed, a close inspection of the domestic industry reveals that factors other than imports, including high priced and unstable supply of energy, corporate mistakes and machinations, cyclical pricing and the weak economy explain the financial performance of the domestic magnesium industry.

To elaborate: High energy prices are causing injury to the industry. Expenditures on electricity and natural gas are a major-cost component of magnesium production in the U. S. and elsewhere. Magcorp officials have publicly stated that energy costs account for up to 40% of the firm's production costs. Decisions on where to open new plants and when to shut down existing ones can be driven by electricity and gas prices.

Alcoa stated that high electricity prices was a driver in its decision to close its facility in Adee, Washington. In Utah, electricity prices also experienced massive increases during the period of investigation. US Magnesium uses natural gas to generate about a quarter of the firm's energy needs. But well-held prices for natural gas have increased dramatically during the period of investigation.

Energy issues continue to plague the industry. Industrial users in Washington state don't have reliable energy sources to meet their needs. In Utah, the situation may be even worse. According to one official at US Magnesium, who stated recently: "Our natural gas prices have gone up over 200% percent in the last two-and-a-half years. It has been devastating. Our electric costs have gone up 35% in

the last two years."

Imports had nothing to do with these developments. Clearly, high-energy costs were a cause of injury to the U. S. industry; and if they persist, will continue to hamper the establishment of additional U. S. capacity.

Turning to cyclical demand: Magnesium prices are cyclical when economic activity is lagging and peak when demand outstrips supply. There have been two periods of low prices during the past 15 years. Magnesium prices reached a trough in late 1991 and in late 2001, coinciding with periods with of weak industrial activity.

Conversely, prices rose sharply in 1995 and are rising again now. The latest trough and subsequent weak-price levels corresponded to a turbulent period in the global economy. Prices began declining in 1996. This decline was exacerbated by the Asian financial crisis, subsequent financial crises in Brazil and Russia, the U. S. recession of 2001, a slower-than-expected rise in automotive demand, and the prolonged slump in U. S. manufacturing.

These events have had a devastating impact on demand and commodity prices in general, but they

are improving. The decline in global magnesium prices was a cyclical and world-wide phenomenon caused by rising supplies after 1995 and coinciding with falling demand. It was not caused by imports, subject or otherwise.

Third: The financial problems of Magcorp and its successor, US Magnesium, during the period of investigation, are self-inflicted. They are directly attributable to the decisions of the company itself. Historically, it seems that every time the company has had cash, it has siphoned it off into the parent company, instead of plowing it back in to timely efficiency-enhancing and pollution-abating investments for the magnesium producers.

Magcorp's bankruptcy came on the heels of a lawsuit by the Department of Justice that was seeking to collect $900,000,000 in fines on behalf of the EPA for illegally handling hazardous waste at its Raleigh facility. Subsequently, a new company, US Magnesium, the Petitioner, purchased the bankrupted firm's assets for less than a third of the value at the time of Magcorp's filing. The Department of Justice subsequently filed a motion to block that sale but the motion was denied. The government's suit remains pending.

Anther cloud still hangs over US Magnesium and that is: The trustee for Magcorp had filed a $1.5 billion suit, alleging that Mr. Ira Rennert and his advisers misled investors in the 1996 offering about the extent of the potential environmental liabilities. These corporate machinations, I think, are important to this proceeding for a number of reasons. It's a pattern. The actions diverted scarce financial resources from Magcorp, weakening the firm during a cyclical downtown and saddling it with interest rates that left it uncompetitive and ultimately bankrupt.

The syphoning of company funds was on such a massive scale that it undermines the meaning of any trends in domestic performance based on a time period that includes Magcorp's successor corporation. Those actions and the habit that they have wrought on Magcorp and on US Magnesium underscore the need for domestic customers to rely on multiple sources to ensure stable magnesium supplies.

This pattern may be happening again. When the company emerged from bankruptcy, it had to gain back market share to get its volume up. Now, while the lawyers are arguing that the company left the EPA problems behind in bankruptcy court, the Department of Justice is still pursuing this case.

So, together, these causes explain any distress experienced by US Magnesium. In contrast, imports are not causing the injury to the domestic industry. Rather, volumes of subject imports are tampering off. Magnesium prices in China, Europe and the U. S. are all sharply rising. The supply-and-demand mismatch that led prices to fall has now been reversed. Magnesium is getting a second look from the auto industry. The U. S. manufacturing sector is showing signs of life. And, as a result, prices are on a upswing for magnesium, steel and other commodities. Spot prices for magnesium have risen by 25% this year and import-dealer prices also have been rising.

So, under these circumstances, I urge you to consider that subject imports are not causing threatened injury to this industry.

Thank you for your attention.

MR. CARPENTER: Thank you very much. I think our colleagues around the table are next.

MR. SHAPIRO: Hello, I am Robert Shapiro of the law firm: Barnes, Richardson & Coburn, counsel to the Alcan Corporation. With me today is Mr. Stanford Yosowitz, Vice President and Executive Counsel of Alcan. Mr. Yosowitz will discuss several commercial

factors that are largely absent from the petition, but which call into question the reasonableness of the allegations made therein. These include: the protracted effect of Magcorp's bankruptcy proceedings on its ability to sell product, the ability of US Magnesium to meet current demands, and recent technological developments in the domestic production of magnesium from recycled material.

I now call on Mr. Yosowitz of Alcan.

MR. YOSOWITZ: Thank you. As Robert said, my name is Stanford Yosowitz and I am the Vice President and Executive Counsel of Alcan Corporation, the U. S. subsidiary of Alcan Inc. Alcan Corporation is one of the largest aluminum producers in the United States. We buy nearly 7,000 metric tons of magnesium per year to supply our U. S. plants.

We urge the Commission, in this case, to make a negative preliminary determination. Alcan centrally coordinates the purchase of our magnesium for all of its operations. Our primary purchase considerations are: quality, reliability and availability at competitive prices for both the long-run and the short-term supply.

Both US Magnesium and its predecessor, Magcorp, had been important Alcan suppliers, with US

Magnesium continuing in that role. However, in order to ensure supply reliability and competition in the marketplace, it is our corporate policy to maintain a diversified-supplier base and to avoid becoming overly reliant or dependant on any single supplier. This policy provides some protection against potential supply interruptions for this important alloying element and helps to ensure competition within the market.

Our corporate policy includes instructions to procurement personnel to invite competing offers from suppliers of all of our raw material inputs, in an effort to ensure Alcan's competitiveness in its chosen aluminum markets. This proved perceptive in recent years as bankruptcies and other outages have made it difficult, at various times, to fulfill our demands. We have experienced supply interruptions in the past due to over-reliance on a single source and do not intend to suffer that fate again.

The bankruptcy and eventual sale of Magcorp created a significant uncertainty regarding the ability of the company to meet Alcan's demands. Because of our concerns regarding the reliability of production and delivery of magnesium from a company that was undergoing reorganization and eventually a

sale under the bankruptcy laws of the United States, Alcan curtailed its purchases from US Magnesium and was forced to seek alternative sources of magnesium, including China.

We often purchase under volume or long-term contract. Thus, it often takes several months for a shift in the supply pattern to take effect. As a result, the effect of the bankruptcy extended well beyond 2001, the year emphasized in the petition, and into the early part of 2003. Indeed, from our perspective, the bankruptcy had a greater impact on our dealings with US Magnesium in 2002 than any other factor.

When US Magnesium weathered the bankruptcy proceeding, Alcan actively sought to purchase additional material from them in 2003 and we were told that they were sold out. In keeping with the corporate policy and outstanding purchase agreements, Alcan continued to purchase from a variety of domestic and foreign sources for the supply of magnesium and encouraged the development of new sources for this material.

Aluminum is a major sustainable resource. Alcan prides itself on the continual development of technologies for the use of recycled materials in the

production of its aluminum products. Thus, it was natural that Alcan would seek to recycle metallic additives used to produce its products.

The biggest change in the magnesium industry is not associated with the importation of product from any specific country, or even the bankruptcy of Magcorp from our standpoint, but rather the development of new technology that permits the domestic production of high-quality magnesium from scrap material. This change has had the most dramatic impact on Alcan's decisions regarding the sourcing of magnesium.

In 2002, this technology was essentially non-existent. By 2003, Alcan was sourcing a significant proportion of its magnesium from a domestic source and has the capability of recycling magnesium scrap in the secondary magnesium. We forecast that there will be a proportion of our magnesium needs that will be fulfilled by recycled materials that will continue to grow dramatically over the next few years as more sources are qualified and will surpass the quantity of magnesium source from other domestic and foreign sources.

Alcan is so committed to developing this new domestic source of magnesium that it has been willing

to pay even a premium. Alcan still needs a reliable source of primary magnesium and we are concerned that US Magnesium is using this trade-remedy action as a means of trying to protect its domestic monopoly in primary magnesium to drive up prices to unreasonable levels.

Any increase in the cost of raw materials is extremely worrisome to Alcan. We have experienced competition not only from other domestic aluminum companies, but also foreign companies that obtain magnesium free from additional dumping duties. We also compete vigorously with other materials, such as plastics and steel. Although our magnesium-supply base has dwindled due to an increasing number of trade restrictions, we have no intention of becoming over reliant on a single company with a questionable financial history.

The source of US Magnesium's problems, as you have heard, and its predecessor Magcorp, is not foreign competition. It has other major problems, including the prolonged and controversial bankruptcy proceedings; and you have heard about their recently being sued by the trustee in bankruptcy. It was one of the nation's worst polluters and faced almost a billion dollars in fines from the EPA. These are just

a few of the problems affecting Magcorp.

MR. YOSOWITZ: In sum, an affirmative determination in this case is not justified. The source of U.S. magnesium's difficulties, if they exist, is not the importation of Chinese or Russian material but its various other problems and, most significantly, the development of new, competitive, domestic technologies that permit the production of high-quality magnesium from scrap materials. Thank you very much for your time.

Mr. Carpenter, we're going to vacate the table here and let our colleagues come up, and then we'll all gather around for the questions at the end.

MR. CARPENTER: Okay. That's perfect. Thank you.

MR. GURLEY: Good afternoon. Again, for the record, my name is John Gurley of Coudert Brothers, counsel for AVISMA. I am here today with Matthew McConkey, also of Coudert Brothers. To my right is Mr. Derek Roberts, who is vice president of VSMPO-Tirus, a U.S. importer of magnesium from Russia. Also here with us today is Mr. John Reilly of Nathan Associates. We will begin with Mr. Derek Roberts.

MR. ROBERTS: Thank you. Good afternoon. My name is Derek Roberts. I am vice president of

VSMPO-Tirus, U.S.

VSMPO imports Russian magnesium from its related company, AVISMA. I am in charge of our magnesium business in the United States. My testimony here today will focus upon four major issues. First, it is our belief that the U.S. industry is producing at 100-percent capacity. Second, the price of magnesium has increased substantially in the last few months. Third, the market is still divided between pure and alloy. Fourth, there is no threat of future injury to U.S. MagCorp.

While demand for magnesium over the last three years has been somewhat flat, a significant amount of capacity has been reduced. For example, in Canada, Neranda shut down over 58,000 metric tons of capacity. In Norway, a 42,000-metric-ton plant was closed. In France, a 17,000-metric-ton plant was shuttered. In addition, Northwest Alloy, a U.S. producer, shut down almost 45,000 metric tons of capacity in 2001.

Put simply, these companies have shut down over 160,000 metric tons of capacity. This decrease in capacity has resulted in a significant tightening of the magnesium. This is good news for US Magnesium and all other magnesium producers. We understand, at

this juncture, U.S. magnesium can no longer commit to any new sales.

While the market has seen an increase in Chinese capacity during the last three years, my customers are telling me that the Chinese are unable or unwilling to use that capacity for various structural reasons. I will speak more about China later in my testimony.

The current condition of the magnesium market is very healthy. Price increases went into effect well before US Magnesium's petitions were filed. By this week, spot prices for magnesium have risen to more than $1.30 a pound, a level not seen since the year 2000. With their order book filled and increasing prices, US Magnesium is in a very enviable position. This trend of increasing U.S. prices is amplified by rising prices in Europe and a weak dollar. In my mind, the price of magnesium is going in only one direction: significantly upwards. I'm sure the buyers at Alcoa and Alcan are sad to hear that, but it is today's reality.

I would now like to address the issue of the two products covered by this case. The Petitioner has stated that they think alloy and pure magnesium are essentially fungible. This is clearly incorrect. For

years, the industry has been divided into two basic products: pure and alloy.

Whilst there has been some slippage in the past with respect to alloy being used for certain pure applications, there is absolutely no slippage in the other direction. For example, pure magnesium cannot be used for the die-casting industry, and the die-casting industry is also the single largest user of magnesium in the U.S. Die casters must use alloy magnesium. Similarly, alloy magnesium cannot be used in several aluminum applications.

Certainly, AVISMA treats pure and alloy magnesium as two very different products. AVISMA cannot, willy-nilly, shift production back and forth between pure and alloy. In fact, AVISMA has significantly less capacity for alloy magnesium production than it does for pure magnesium. It must use specific equipment for its alloying operations. Therefore, it is totally incorrect to state that these products are fungible.

I would now like to address the issue of future threat to the U.S. magnesium industry because of Russian imports. AVISMA is operating at 100-percent capacity. In fact, both AVISMA and Solikamsk, the other Russian producer, are both producing flat

out. AVISMA has already entered into contracts for 2004 and cannot sell anymore magnesium than it has already contracted for. Also, AVISMA has several major contracts for 2005. AVISMA cannot increase its exports to the U.S. market, and it has no capacity in Russia to do so. Moreover, AVISMA simply has no plans to increase its production capacity in the next two years.

With respect to alloy magnesium, I must point out that AVISMA has no U.S. customer orders for alloy magnesium and expects to make zero shipments in both the years 2004 and 2005. I repeat, zero shipments. So for this product, there can be little threat from Russia.

China is the industry's wild card, but China is having its own problems, according to information received from our customers. These include coal shortages, sharply rising energy costs, and higher transportation costs. Moreover, by all accounts, Chinese domestic demand is increasing explosively, and so our their prices. In fact, during 2003, many Chinese companies began to cancel contracts. On Wednesday of this week, I was approached by a customer of mine whose Chinese supplier had canceled a contract. He asked if AVISMA could supply him.

Sadly, I had to say no.

US Magnesium has a very bright future, but they have to expect their customers to maintain alternative sources of supply. No sensible business operation will want to commit to only one supplier, especially in a buoyant metals market. It is incorrect to claim Russian magnesium is a problem. US Magnesium's past problem had nothing to do with imports, and US Magnesium's use of low prices to take volume in a flat market was also unrelated to imports.

The future is bright for all of the magnesium companies here today, and it defies logic why US Magnesium is seeking relief when they should be busy trying to keep their customers happy.

The bottom line is that it is now a seller's market. Thank you very much for your attention.

MR. GURLEY: We will now hear from John Reilly.

MR. REILLY: Thank you. Two points before I begin my testimony. Number one, I'll be referring to handouts, and there is a stack of them on the table over here to my left for anybody who needs to refer to one; and, second, I would ask the staff's indulgence. I've picked up a bit of a bronchial infection, so I may have to stop from time to time to wet my whistle

as I testify.

For the record, I'm John Reilly, appearing on behalf of AVISMA and its U.S. affiliate, VSMPO-Tirus.

Regardless of whether one views pure and alloy magnesium as one like product or separate like products, the economic data do not support the proposition that imports of magnesium from China and Russia have caused, or threaten to cause, material injury to the domestic industry. The economic analysis of injury and causation in this case must deal with three important developments during the POI.

First, U.S. magnesium consumption plummeted during the 2001 recession and has remained relatively flat since then.

Second, Northwest Alloy ceased magnesium production in September 2001, for reasons totally unrelated to subject imports and leaving US Magnesium as the only U.S. producer of primary magnesium and pure magnesium ingot. Northwest's closure significantly reduced the total U.S. magnesium production capability.

Third, U.S. magnesium operations were seriously disrupted in 2001 by the combination of a Chapter 11 bankruptcy proceeding and efforts to

modernize its magnesium-production facilities. These two circumstances affecting U.S. magnesium are unrelated to subject imports.

Now, with these circumstances in mind, let's review the numbers, and please turn to Chart 1. The first chart shows the subject imports, as defined by the Petitioners, did, indeed, increase. It looks very much like Ken Button's chart. Subject imports amounted to about 2,400 metric tons in 2000; 2,100 metric tons in 2001; and then increased to just under 35,000 metric tons in 2003. But as I'll shortly demonstrate, this increase constitutes an absolutely essential increase in the U.S. magnesium supply in light of reduced domestic and foreign production capabilities.

Now, my next chart shows that the total magnesium import supply actually decreased between 2000 and 2003. Total imports amounted to about 83,000 tons in 2000 but declined to 69,000 tons in 2003. That's a 16-percentage-point decline.

Now, Chart 3 of my analysis shows that total combined imports from China and Russia also declined between 2003, -- a slight decline but, nevertheless, a decline -- from 35,900 tons to 34,700 tons.

Now, as Chart 4 makes clear, total imports

from China declined very sharply, from 22,000 tons in 2000 to 13,000 tons in 2003.

Now, let's relate these import trends to the evolution of the domestic magnesium supply, beginning with my Chart No. 5. Now, US Magnesium data are confidential, but aggregate data for secondary producers are not. Note that U.S. secondary magnesium production is estimated by Petitioners to increase from 17,000 metric tons in 2000 to more than 20,000 metric tons in 2002 and over 22,000 metric tons in 2003. The total 2000-to-2003 increase amounts to over 30 percent. That's not too shabby.

As I said before, the specifics for US Magnesium are confidential. Nevertheless, press articles about the company are instructive. A company executive was quoted in a November 21, 2002, American Metal Market article to the effect that the company had run at less than capacity while in Chapter 11 but was ramping up and expected to be at capacity in early 2003. In the same article, a magnesium trader said the following: "They lost market share when they were in Chapter 11, so they are selling aggressively."

Now, in a Normac article, dated February 3, 2003, traders were quoted to the effect that US Magnesium was pretty much sold out. As Mr. Roberts

noted in his statement, it appears that US Magnesium has been sold out since at least mid-2003. With US Magnesium sold out and the secondary producers operating at an estimated four-year peak, there is no way that the volume of subject imports could be a cause of injury or pose a threat of injury to the domestic industry.

Now, let's examine the issue of pricing. Chart 6 shows the average landed, duty-paid, unit values of pure magnesium ingot from Russia. Note that these data represent the importer's acquisition costs, not the importer's selling price. The average import value declined from late 2000 to mid-2001 but has remained remarkably stable since then. In view of the very sharp demand decline that occurred during 2001, the average price decline is hardly surprising. The stability of the average value since mid-2001 belies any notion that Russian suppliers have attempted to increase their market share by leading prices down.

Now chart 7 shows the average landed value of alloy magnesium from China, and these data are similarly devoid of any indication of an attempt to buy market share by lowering prices. The average import value declined during 2001, the recession period, but then remained highly stable from the

beginning of 2002 through the first quarter of 2003 and then increased steadily to about the average 2000 level during the remainder of the year, 2003. The 2003 increase in average values reflects sharply rising energy costs, raw-material costs, ferrosilicon, and transportation costs in China.

Now, magnesium price data are confidential for US Magnesium; however, Census export data in Chart 8 provide an insight into the company's pricing strategy. Because US Magnesium has been the sole U.S. producer of pure magnesium ingot since late 2001, the U.S. domestic export data for pure ingot should reflect principally US Magnesium's exports. Canada is, by far, the largest customer for our domestic, pure-magnesium-ingot exports. The average unit FAS value of U.S. exports to Canada plunged from $1.14 a pound in the third quarter of 2001 to 72 cents a pound in the first quarter of 2003 and remained at that very low level through the fourth quarter of 2003.

Now, these data suggest that US Magnesium chose to buy market share in Canada at very low prices to fill capacity idled during the 2000 period of operational disruption. Since the company appears to have achieved sold-out status in 2003, during a period of relatively flat demand, this aggressive pricing

strategy no doubt also prevailed in the U.S. market.

I should say, as an aside, that we found that average unit values of the exports to be quite surprising, and I know that the folks that we've been talking who operate in the industry found them to be very surprising as well. We did check the stats, Canada import figures, and the import figures are consistent with the export data. Now, these data may not reflect the final selling cost in Canada, but they show clearly that the products being exported to Canada were being priced very aggressively.

From late 2003 to the present, the U.S. spot price for magnesium has increased steadily, as shown in my Chart 9. Mr. Roberts has estimated the current price to be about $1.30 a pound, and that's a level not seen since the strong demand period of 2000. Now, since there has been no sudden, dramatic increase in magnesium demand since late 2003, the price increase must, of necessity, reflect supply side developments. In particular, some 168,000 metric tons of annual capacity in North America and Western Europe have been removed from the market during the 2000-to-2003 period. In addition, the sharp escalation of Chinese costs and prices has caused Chinese producers to require significant premiums over contract prices as a

condition of maintaining supplies.

The dearth of western capacity and the structural constraints on Chinese supplies are not expected to disappear anytime soon. Accordingly, the near- and mid-term outlook for U.S. magnesium prices is quite favorable. This is hardly indicative of a threat of injury. In short, the data for all subject magnesium in the aggregate show neither that subject imports have caused material injury to the domestic industry nor that they pose a threat of material injury.

I would like to now turn to the issue of like product, and some of the numbers I'm going to quote to you are a bit different from the numbers you heard this morning. My next chart addresses the like-product issues directly. Now, USGS data, and this is data from the 2002 Minerals Yearbook, which is a different source from what was quoted by the Petitioners this morning, indicate that 50 percent of the U.S. primary magnesium supply -- I emphasize "the primary magnesium supply" -- was consumed in the production of magnesium castings. The data include also a small volume of wrought products, which also require allow magnesium.

Aluminum alloy production accounted for 36

percent of consumption, and iron and steel desulfurization accounted for some nine percent of consumption. Now, based on USGS data, the 2002 primary consumption amounted to 96,100 tons, and U.S. secondary production amounted to about 20,300 tons. This excludes the secondary recovery, for example, by melting aluminum scrap.

Now, assuming that the significant majority of secondary alloy production went for castings and nonaluminum uses, an estimated 59 percent of U.S. magnesium consumption in 2002 went to U.S. castings. This is shown in Chart 11. That figure is overstated somewhat because there is a volume of secondary production that does go for iron and steel desulfurization. Nevertheless, the data indicate that a majority of U.S. consumption actually did go to a series of alloy applications for which pure is not a substitute.

Now, there is substitutability between pure and allow magnesium in aluminum alloying and steel desulfurization, but this is, by no means, a free, 100-percent, use-any-alloy type of substitutability. Accordingly, for a significant majority of the tonnage consumed in the United States, pure and alloy magnesium do not appear to be viable substitutes and,

therefore, cannot be considered like products.

And let's examine the import volumes now on a separate basis, looking separately at pure and alloy, and that is initiated in Chart 12. U.S. imports of pure magnesium in ingot and granular form declined significantly between 2000 and 2003, from about 38,000 tons to 28,000 tons. In addition, the 2003 import volume was only 3,300 tons higher than the 2,400 and 900 tons imported during 2001. So even if you use the recession year as the base year, there was not a significant increase.

Total imports from Russia and China also declined significantly between 2000 and 2003, from 26,300 tons to 18,100 tons. Now, if you look at the recession year and compare 2003 to that, imports from China and Russia increased by only about 3,600 tons.

Now, given the sold-out condition of the sole U.S. producer of pure magnesium, this pattern of imports could hardly be considered injurious. Imports of granular magnesium, by the way, are presently significant. These imports amounted to less than 950 tons in 2003, and that's about 1.4 percent of total imports for the year.

My next chart looks at imports of alloy magnesium. Now, imports of this product increased by

2,700 tons between 2000 and 2003 and by 7,800 tons between 2001 and 2003, and imports from Russia and China increased by 7,167 tons over the same respective periods. However, again, in view of US Magnesium's sold-out condition and the strong performance of the U.S. secondary producers, these import volume trends support neither injury nor threat of injury. As shown previously, the average value data simply do not square with injury or threat of injury, and that applies both to pure from Russia and alloy from China, and, by the way, those are the vast majority of respective imports from the two countries.

In sum, no matter how one organizes and analyzes the data, there is no basis for finding that the subject imports have caused injury to the domestic industry or pose a threat of injury to the domestic industry.

Before I close, I would like to emphasize one point that Mr. Roberts made, and that is that the industry in Russia is in the same condition as US Magnesium. It is essentially sold out and operating flat out, and they cannot significantly increase their exports to the United States market. Thank you.

MR. WAITE: Good afternoon, Mr. Carpenter. I am Fred Waite from the firm of Vorys, Sater, Seymour

& Pease. With me is Kimberly Young, also of the firm. We represent Solikamsk Magnesium Works of Russia and Solimin Magnesium Corporation.

We join in the comments that you've just heard from Mr. Gurley and the witnesses from AVISMA. We are available to answer your questions and to respond to any requests you may have for additional information. Thank you.

I believe, John, that ends the affirmative presentation of the interested parties of the Respondents' group, but I believe there are two additional witnesses on this panel. Thank you very much.

MR. CARPENTER: Okay. Thank you. Michael, do you want to say anything?

MR. GAMMONS: My name is Jim Gammons. I'm president of Erie Shore Marketing in Port Clinton, Ohio.

MR. CARPENTER: Thank you.

MR. GAMMONS: I am the North American marketing agent for Tiangen Magnesium International. Tiangen Magnesium International is directly associated with China's largest magnesium producer with a capacity in excess of 42,000 metric tons per year. That plant is the Shanxi Yuunan Magnesium Cooperative.

Two gentlemen from China are with me today, Mr. Zan Husan and Mr. Zan. We would try to get more, but, unfortunately, it's not as easy to zoom over here as it is for us to zoom around. They would be happy at the end to answer questions about what's going on in China.

We feel as though this action by our domestic suppliers is unwarranted at this time. We feel that because of the transition that's going on in China. As everyone knows, the China economy is booming. The area of the steel industry is growing so fast that those of us in the magnesium industry in China have to compete for the same raw materials. Because of that, even on a daily basis, our raw materials are increasing.

As of last June, we've been unable to meet and hold prices because of the daily increase in raw materials. People like myself can no longer quote long-term contracts here in North America and fix the prices for anything longer than maybe 30 or 60 days. Right now, in the last week, the two gentlemen of China, when we visited die casters and potential customers and automotive and explained to them what's going on and that we apologized, but our prices are going up and up and up, and the ones that we quoted

for the summer delivery far exceed the gentlemen that are domestic, post-secondary recyclers that produce automotive-grade die casting and the pure-ingot producers here in the United States.

The other situation we have is that we are concerned now only in importing in the areas that we feel as though that we can be competitive. Alloy ingot, as everyone was talking about today; we're looking at strictly die-cast-grade ingot. As you've heard, without our die-cast-grade ingot, a lot of the American die casters will not be able to get their domestic supply, or they will have to pay huge prices for it, which make them uncompetitive, and we all know the folks in Dearborn really don't care. As long as their parts are maintained and their prices are competitive and they can get them somewhere in the world, then they will get those parts. Currently, in China, General Motors is building two plants, and many Asian companies are also building plants to produce automobiles. We need to stay in that bandwagon.

Unfortunately, the die-cast material, the balance this year sold into America, could not be sold into the aluminum industry. It contains a beryllium additive and should not be used in making certain types of aluminum. It also is certified by

automotive, so it's much more expensive than, say, the pure that is bought here domestically or from Israel or Russia.

I have heard here today the people say that the price of alloy is cheaper than the price of pure. That's not true. In many cases, certified alloy, automotive-grade ingot is 30 to 40 percent more than pure. Since June of last year, our material has increased 40 percent in many product lines up to today, and as of next week, it will probably go up some more. I think if the Commission waits and lets supply and demand take its course, the people at the magnesium company in Utah will see that their profits will increase, the prices are going up that we haven't seen, and I've been in the business for seven years, that we haven't seen in those seven years, at least from the Chinese stand.

We talk about granules. The desulfurization product that we make and bring into the United States is made strictly for desulfurization. It contains 10 percent lime, and everything is coated. It can only be used in the steel industry; it can't be used anywhere else. The chips that are brought into the United States from our company are used for a process developed here in the United States called the

"thixamat process," and right now we're 20 cents a pound higher than the producers that are making them in the United States. So we're not quite sure what's going on here. Okay?

We did put this together, and I have to thank Mr. Fischer for his help the last week because we've been scurrying all over trying to get involved. I'm not an attorney. The two gentlemen with me aren't attorneys, and so we kind of wanted to be here because the Chinese producers do care, and if the system continues, more and more producers will be involved and learn how to fight for their rights here in America.

The die casters of America and a Mr. Dan Hoggard from Northern Diecast, our largest customer, wrote you a letter I think. He buys approximately 20 containers per month. If he can't get our magnesium, then he'll have to shut his company down, and there's 160 employees there. He is looking at moving some of the machines over to China or moving them to Canada. We feel as though actions like that here in America can be avoided.

Buying demand in this product from our products in China; it's all being the problem that the domestic suppliers are having. I think you'll find

that they should really worry about increasing their capacity. It will be three to five years before we can have energy problems solved and the raw-materials problem solved, and get back into the marketplace as an extreme aggressor again. They need to take advantage of that.

Again, I want to thank all of you for allowing me to come. Mr. Fischer, thank you for your help. The two gentlemen from China would be more than happy to answer any other questions about the problems over there at this time.

MR. KELLEY: Good afternoon. My name is Michael Kelley. I'm a vice president of the Metal Exchange Corporation in St. Louis. Metal Exchange is a manufacturer and a marketer of nonferrous metal products, which includes aluminum, copper, and magnesium. Metal Exchange has been involved in the consumption and marketing of magnesium for 25 years. At one time, we even represented the predecessor company for US Magnesium in marketing their product domestically here.

We are here to speak against any increase in the duty structure for magnesium being imported to the United States, whether from China or from Russia. Specifically, in China, prices for magnesium alloy

have gone up significantly in price steadily over the last 18 months and in a very accelerated way over the last six months. These increases have come about because prices of specific items used in the manufacture of magnesium in China have gone up in price, dramatically in some cases.

With steel-production demand in China, it is taking the ferrosilicon out of the market, and in a discussion I had with a ferrosilicon producer in China yesterday, he indicated that over the last six months, the ferrosilicon price domestically in China has doubled in price. That is a very significant thing for them.

Coal and electricity costs have increased, and demand in the exploding Chinese economy has totally outstripped supply in that area, and oil prices have increased globally, which increases the ocean-transportation cost as well as the inland transportation cost here, and then recently they have enforced the over-the-road weight limits in China so that where they used to carry one load of magnesium to the port to export it, those trucks are overweight, and so the cost has doubled because it now takes two trips to carry what one used to carry.

The net effect of all of this, as should be

expected, is that the price of magnesium alloy out of China has increased a minimum of 25 percent over the last year and is continuing to increase on a daily basis. I would say you're on an asymptotic curve going up right now. Nobody knows where the top is.

These increases are not the result of government fiat from central market control. They are not the result of threatened trade sanctions. They are the result of the market forces at work in this industry. Adding any duty to Chinese alloy magnesium at this time would ignore the fact that market itself is bringing efficiencies to this business, and the market will do a better job than any of us sitting here because we have much more incomplete knowledge than that.

Another comment which I would make: One effect of the increase of the raw-material prices in China is that a lot of Chinese suppliers, and it's an unspecific number, but a number of Chinese suppliers have said, We can't supply those contracts we agreed to previously. This has put a lot of U.S. customers into a bind because they have been scrambling to have to find other suppliers, as you heard the comment from Alcan.

What has happened is that no domestic

consumer wants to say, we're going to rely 100 percent on imported material. It is driving them directly into the hands of US Magnesium. But once again, I would emphasize, this is the market at work. There is nobody else telling anybody; it's the market at work.

The last comment I would have is that US Magnesium has spent the better part of the last decade claiming injury from Canadian, Russian, and Chinese producers, and that has been at the expense of U.S. industry and eventually the U.S. worker and the U.S. consumer. They have returned to this venue repeatedly for protection, on one hand, while, on the other hand, they are either unable or unwilling to supply the total demand that this market has at this point.

I would urge you, in this matter, to add no further duty to the imports of Chinese or Russian, and, in fact, I would urge you to rescind the duty you did on Chinese primary about three or four years ago because it's not really a fair duty, and this market demands more material. I would say, don't make this market the exclusive reserve a very inefficient and inadequate domestic producer. The American worker and the American consumer can't afford that. Thank you.

MR. CARPENTER: Thank you very much for your presentations. Now, if we could ask the

representatives from Alcoa and Alcan to come forward, we will address questions to the entire group as a whole.

(Pause.)

MR. CARPENTER: We'll being the questions with Mr. Fischer.

MR. FISCHER: Thank you, everyone, for your testimony. I'll be brief. I just have a few questions.

I guess this question is tossed out probably to the attorneys of counsel to respond to and others to feel free to respond as well. The domestic producers have asked the Commission to collect information for four years, from 2000 through 2003, and I just wanted to get your comments on whether you feel that's appropriate, warranted, whether the Commission should focus on a three-year period of analysis or a four-year period of analysis or some other period.

MR. LEIBOWITZ: This is Lewis Leibowitz for Alcoa. The standard procedure, of course, for the Commission is a three-year period of investigation plus partial years, more recently. The four-year period, I think, allows for some previous information prior to 2001, which I think we would all agree was a

recessionary year. So if you started with 2001, you would start from a very low base and probably a distorted base, so I think there is some justification for it. The additional justification would be that because of the timing of the petition, there is no partial-year data for 2004. If they had waited a month, there would have been at least the first quarter of 2004, and I think you would see some radically different information from that.

So, for Alcoa, we don't have any fundamental objections to the four-year period. It's an unconventional case in many ways. This is just another example of it.

MR. REILLY: From an economist's perspective, I guess it doesn't make any difference. The situation does not alter with the period examined.

MR. FISCHER: Thank you. Mr. Roberts, you had indicated -- I just want to make sure I'm clear on this -- that AVISMA does not export alloy magnesium or has not exported alloy magnesium to the U.S. market since 2000. Is that correct?

MR. ROBERTS: No. I did not say that. I said there would be no alloy in 2004 and unlikely to be in 2005. I have no orders in 2004.

MR. FISCHER: But there have been exports to

the U.S. of alloy magnesium from AVISMA in 2001, 2002, and --

MR. ROBERTS: Yes, yes, there have.

MR. FISCHER: Does AVISMA sell in the U.S. market secondary magnesium?

MR. ROBERTS: They sell no secondary.

MR. FISCHER: Likewise, any granular magnesium?

MR. ROBERTS: No granular.

MR. FISCHER: Mr. Waite, on behalf of Solikamsk, if you could comment.

MR. WAITE: On behalf of Solikamsk, the answers are substantially the same. However, I would urge you to look at Solikamsk's Magnesium Works' and its affiliated Solikamsk Desulfurizer Works' responses, which have very precise answers to your questions.

MR. FISCHER: To the extent that anyone can just add additional information, either at this point or in a post-conference brief, regarding China's output, several people have indicated that Chinese output is constrained or will be constrained. If you can just provide additional information in your post-conference brief, that would be helpful. Thank you.

MR. CARPENTER: Mr. Sultan?

MR. SULTAN: Mr. Yosowitz, I thought I heard you say that your company is increasingly using a recycled domestic product. Is that correct? Is that an alloy product?

MR. YOSOWITZ: Yes. We call it an alloy product. It's not pure.

MR. SULTAN: Okay. Thank you very much.

Mr. Roberts, I thought I heard you say that AVISMA uses specific equipment for alloy production. I think you were trying to make a distinction between pure and alloy production. Can you elaborate on that a little bit, what specific equipment that is?

MR. GURLEY: I think maybe he gave some general comments, but the specific kinds of equipment, I think we would deem as confidential, but I think he can make some general comments.

MR. ROBERTS: Yes. Certain of our total production, our alloy capability is less than 50 percent of our total production. The exact figures are, obviously, somewhat confidential. We use specific casting and melting equipment to produce these alloys which is different from pure production.

MR. SULTAN: Thank you. A question for Mr. Reilly. First of all, I thought that I heard you concede that certain types of alloy magnesium are used

in what used to be pure applications in the production of aluminum alloys and desulfurization reagents, but I thought I also heard you suggest that this is only true for some alloys, not for all types of alloy magnesium. Can you elaborate on that?

MR. REILLY: Yes. What I said was that it's not a situation where you can simply substitute, say, alloy into aluminum production without any consideration of what the content of the alloy is. For example, any alloy magnesium that contains beryllium would be verboten for aluminum production, and I think that perhaps the aluminum company representatives could explain that better than I.

MR. SULTAN: I guess I'm interested in having an idea, just a rough idea, of what part of the total universe of alloy aluminum can be used in these applications and what part can't be. It's a little bit of a nebulous question, but I --

MR. REILLY: That's something that I think either one of the aluminum company representatives might be able to address or something we can try to get a handle on in our post-conference brief.

MR. LEIBOWITZ: Mr. Sultan, would it be all right for Mr. McHale to comment on that?

MR. SULTAN: Certainly.

MR. McHALE: The majority of the alloy product contains beryllium. Alcoa has a goal of being beryllium free, and the majority of the application for magnesium in Alcoa and, I believe, Alcan, too, is to make aluminum cans. You don't want beryllium in the metal in an aluminum beverage can, and beryllium is used by the die-casting industry, and they require beryllium content in the metal, and we require no beryllium in our metal. So the alloy product, at least at Alcoa, cannot be used.

MR. SULTAN: When you say that the majority of the alloy product contains beryllium, can you give me some idea of what you mean by "the majority"?

MR. McHALE: I really don't participate in the die-cast market. Unfortunately, I don't think there is anybody here that represents the die-cast market. My guesstimate would be 85 percent would have beryllium in it. All of the secondary product would have beryllium in it, that's die cast, that's recycled; that would have a beryllium content.

MR. SULTAN: Thank you. That's all I have.

MR. YOSOWITZ: I really can't comment on that; but, we can look into it, certainly.

MR. SULTAN: That's all. Thank you.

MR. CARPENTER: Mr. Benedetto?

MR. BENEDETTO: Thank you all for your testimony. For the industry witnesses, are there any quality issues in the competition between U.S., Russian, and Chinese magnesium? Does magnesium compete truly on price?

MR. MCHALE: I would say that magnesium is as much a commodity as aluminum, copper, lead, tin. The only factor is it's not traded, because the market is so small and because the product has a shelf life. It will oxidize, so it can't be something that can be stored in a warehouse. But, I would say, absolutely, interchangeable between products and the nationality of the product, as far as consumption is concerned. There is a sameness there.

MR. BENEDETTO: Does anyone else --

MR. GAMMONS: I'd like to add on the alloy die cast, the automotive has very strict verifications. When it comes to automotive certified, there are only a handful of producers in China that qualify. Many of the die casters in America use our material and have to have it certified prior to use in their product, or at least report it. But when it comes to the die cast grade, there is different competitions. The recyclers in America have gone through stringent qualifications to get their material

automotive certified; so, therefore, they get more for their product often than we can get for die cast that's not automotive certified.

MR. BENEDETTO: Why is it difficult to get the automotive qualification or certification?

MR. GAMMONS: It's a long process and costly process to go through. We're going through it. Tiangen just entered that field of the market last year. It takes a good year, 14 months, to become certified. We are certified by Volkswagen in Europe and by the ISO certified in China. But as new to the market in the United States, we have to go through that gamut to get the price that we want. And at that point, we'll ask for more per dollar than a domestic supplier.

MR. BENEDETTO: Anyone else have anything about the quality and the competition?

(No verbal response.)

MR. BENEDETTO: Again for the industry witnesses, are there any substitutes for magnesium in the end uses that you're familiar with, either as a user or distributor? Could you use something else instead of magnesium?

MR. MCHALE: In our applications, magnesium is it. There are no other metallic substitutes that

would give us the same properties that magnesium does in the product that we manufacture.

MR. BENEDETTO: Does anyone know if that's true for the die casters, as well?

MR. MCHALE: I would think the substitution of the die casters would be aluminum. That would be an alternative product.

MR. GAMMONS: Magnesium has just been used in the die cast field more predominantly, because the price of magnesium has come down. We're happy to say it's stronger and lighter.

MR. BENEDETTO: How significant is magnesium as part of the overall cost of the products that it's finally used in? We've heard two very different stories this morning and from this panel, so I was wondering if you could maybe elaborate a little bit on -- you seem to make it sound much more significant than this morning.

MR. MCHALE: What the impact of an increase would be?

MR. BENEDETTO: Right.

MR. MCHALE: As the largest consumer of magnesium in the world and the multiples of tonnage that we buy, those significant increases are -- there's a lot of money involved here, if this thing

runs.

MR. LEIBOWITZ: This is Lewis Leibowitz for Alcoa. I wonder if I could elaborate on that a little bit, because I think you have to look at the entire range of choices available to companies that are in any business that would use magnesium or any other raw material. If costs increase globally, it's difficult to move to the moon or Mars. So, changes in production are relatively unlikely. If costs increase in a particular market, which is exactly what antidumping remedies do, then those companies that can make a choice of where to manufacture their products will look at things like raw material costs, whether it's magnesium or anything else, and make those production decisions based on the reliability of their cost structure, the efficiency of the plants where they are. And this is part of the mix; so that when you change one factor, you necessarily are changing the tipping point where incremental production will go or where production will be cut back.

Alcoa, among others, is a global company and they will make those choices based on the conditions, as they see them. And I think any company will do that. There are some companies that have one plant in one location; they either live or they die based on

these costs. Other companies can shift production around the world. And, you know, you sort of get what you get in those complicated decisions. But, we've seen it in case after case when dumping duties or countervailing duties or other trade restrictions are imposed, that it results in the shift of production at various places around the world and that is an inevitable consequence of this. So, you need to be aware of that when you make those decisions.

MR. BENEDETTO: Anyone else?

(No verbal response.)

MR. BENEDETTO: Finally, Mr. Gammons, I believe you said that alloy is more expensive than pure, which is, again, different than what we heard this morning. Can anyone elaborate on that? Does everyone else agree or disagree with that and sort of under what circumstances is pure more expensive than alloy or vice versa?

MR. GAMMONS: I made that comment, because we take -- to make our automotive grade alloy material, we start with pure, then we re-melt and do a vast amount of testing and chemistry to it, to make it automotive grade, whether it be AZ91 or AM50 or AM60. Plus, the beryllium is very expensive. It's added to it; it's not added in the pure. But just the extra

handling and the extra manufacturing makes it more expensive.

MR. BENEDETTO: Anyone else?

(No verbal response.)

MR. BENEDETTO: Thank you, very much.

MR. CARPENTER: Mr. Yost?

MR. YOST: Thank you all for coming here. Mr. McHale, just a quick question regarding the -- what is it, Northwest Alloys. What happened to the assets. When you shut it down, were they sold off? They still exist? What?

MR. LEIBOWITZ: This is Lewis Leibowitz. Having participated in the hearing in 2001, I have some familiarity with that. The assets still exist. They're still sitting in Addy, Washington, and it has been shuttered for two-and-a-half years. Alcoa still owns Northwest Alloys --

MR. YOST: Okay.

MR. LEIBOWITZ: -- but it's not doing anything.

MR. YOST: Did Alcoa write off the assets?

MR. LEIBOWITZ: We can provide that information in our post-hearing submission.

MR. YOST: Okay, thank you. I think that concludes my questions. Thank you, very much.

MR. CARPENTER: Mr. DeSapio?

MR. DESAPIO: Does anyone have any idea why Dow exited the industry in 1998? Was it because of conditions in the magnesium industry or possibly that they wanted to concentrate on their core business? Has anyone heard anything?

MR. WAITE: This is Fred Waite. There is a great deal of information in the previous investigations about Dow exiting the industry. My recollection, and I would be happy to either confirm or reenforce that recollection post-hearing submission, is that the Dow facility suffered serious damage in a natural occurrence. I believe it was a hurricane. And given the conditions of the plant, given the state of the technology of the plant, given Dow's corporate objectives in other areas, they simply decided to shutter the plant and not reopen it. But, I will certainly look into that and provide that to you, in our post-hearing submission.

MR. DESAPIO: Thank you, very much. No further questions.

MR. CARPENTER: Mr. Deyman?

MR. DEYMAN: George Deyman, Office of Investigations. In the petition, Exhibit 14, there is press clipping from the American Metal Market,

November 20, 2002. And I quote briefly from it. It says, "North American producers, as well as importers of Russian magnesium, have come under increasing pressure in recent months from low-priced imports of Chinese magnesium alloy, market sources said. Delivered prices for Chinese alloy are about 80 to 90 cents a pound, at least 10 percent lower than other suppliers, sources said." Then, they go on to say, "the big aluminum companies are looking at Chinese alloy as an alternative right now. The big players, like Alcoa, Inc. and Alcan, Inc. are switching to take Chinese AM50A alloy, for example. The Chinese have figured out that this way, they can avoid the duty."

Although you can't always believe everything that is quoted in the press, could you comment on what the American Metal Market said?

MR. LEIBOWITZ: This is Lewis Leibowitz. Mr. McHale is reading the article now. We happen to have it up here, so I think you might want to hear from him about this.

MR. DEYMAN: Post-hearing?

MR. LEIBOWITZ: Post-hearing.

MR. DEYMAN: Fine. Mr. Leibowitz, you mentioned that, of course, Northwest Alloys closed down, but that it did not close because of the imports

from Russia or China. Could you, in your post-conference brief, perhaps supply your basis for that? There may have been a press release or statements from individuals at Northwest Alloy.

MR. LEIBOWITZ: Certainly, we would be happy to do that in our post-hearing submission. Alcoa did participate in the final injury investigation hearing here at the ITC in October 2001 and, also, submitted briefs there. So, we'll give you the full picture.

MR. DEYMAN: Mr. Roberts, you mentioned that some magnesium plants around the world have shut down capacity; but, then, later, you mentioned that the Chinese capacity has increased. Could you tell me or tell us why -- what caused the shutdowns in capacity around the world?

MR. ROBERTS: Well, not having worked in any of them, I'm not absolutely certain. I'm sure that raw material costs -- increase in raw material cost, increase in energy cost were a major factor. A magnesium plant is, also, very, very expensive, in terms of capital equipment. If you don't pull money back in, then you can very quickly lose your plants. And so, there's a large capital equipment upkeep on a lot of these plants.

MR. DEYMAN: Mr. Roberts --

MR. LEIBOWITZ: Excuse me, Mr. Deyman, I just wanted to mention one thing that occurred to me as kind of a basic fact and I found it fascinating. Magnesium is one industry where different producers around the world don't make it the same way. There are vast differences in where the raw material comes from. US Magnesium uses the Great Salt Lake. There's an Israeli producer that has a similar process. But, in Russia and in China and in Washington State, where Northwest Alloys was, they did it in a completely different way. There are a lot of variations in costs and structure and all that sort of thing.

MR. ROBERTS: I think to be very successful, you need to be near a source of raw material. And if you're any distance away, with transportation costs, as well, today, then you will suffer.

MR. DEYMAN: Mr. Roberts, you, also, mentioned that there is some use of alloy magnesium for pure magnesium. I think you said in aluminum alloy and steel desulphurization. But, has there been a significant increase usage, in your opinion, of alloy magnesium for pure magnesium in the United States in the past few years, or is it a minor increase?

MR. ROBERTS: As I said in my submission, we

have no orders for alloy this year, which is an indication that there's not a large increase. Over the last few years, we've only imported relatively small amounts of alloy.

MR. DEYMAN: I believe it was Mr. Gammons and/or Mr. Kelley, who mentioned that the prices of the product from China have gone up in the last 18 months or so. That may very well be; but looking at the import statistics -- and I'm looking at annual data only, I don't have the monthly data in front of me -- but looking at annual data, although it is true that the unit value of the Chinese product went up in 2003 over 2002, it's still below the unit value of 2000. Could you comment on that?

MR. KELLEY: It's an interesting comment and it goes along somewhat with this comment that Mr. Benedetto was asking about the Chinese production capacity. There are parts of China that have been blessed with fabulous raw material for making magnesium. What happened as the economy opened up is that you had many people just saying, I can do that, too. So, you had huge numbers of production plants opening, saying let's do that. That resulted, I think, in the initial drop.

What happened, then, is they realized they

couldn't make money at it and now you've got people -- when they say 700,000 tons, I don't know if that's accurate or not; but, in fact, a large percentage of that tonnage is not operating and will not be operating. So, even the big producers, such as the one that Mr. Gammons is referring to, is operating at less than 50 percent capacity, at this point, just because of that. So, I think it was because of the domestic opportunity, new raw materials get into a business, entrepreneurship, and then as they failed and turned the capacity off, it's just sitting there now.

MR. DEYMAN: It was mentioned that the alloyed product contains beryllium. I'm just curious, why would the alloy product contain -- or a lot of it contain beryllium?

MR. GAMMONS: The die casters require beryllium be added, even though there's only eight million parts per million addition to it. It's a necessity for die casting cleanly, mold release. The exact metallurgical end of it, I'm not sure. But, absolutely no die cast material can be used without beryllium. Some of the die casters have tried buying less expensive alloy material and adding the beryllium, themselves, and only run into problems.

But, everything that comes in on automotive certified alloyed grade material, whether it be 91 or 50 or 60, has to have beryllium in it.

MR. DEYMAN: And die casting accounts for approximately what percent of the U.S. market?

MR. GAMMONS: Oh, I couldn't exactly tell you. But, according to the numbers from our associates here, it's 55 percent.

MR. DEYMAN: Of the market for all magnesium or for alloy magnesium?

MR. GAMMONS: No, it looks like all magnesium.

MR. MCHALE: One of the costs of utilizing magnesium is its melt loss. When you put the metal into -- put magnesium into molten metal, some of it burns off. The beryllium retards that burn off, so you get a better recovery when you're melting the ingot. Better recovery means better cost. So, that's why -- I believe that's why beryllium is added to the die casting alloys, to improve recovery on the re-melt of that ingot. And the application of the die cast -- you don't want beryllium anywhere near food -- cans, you know, any kind of application. Obviously, your steering wheel might not -- you might not be near food and that's an application for magnesium. So, they're

not quite as concerned about the contamination of beryllium, because of the application of the product.

MR. DEYMAN: Just a few more questions. The Petitioners claim that the prices of pure and alloy magnesium have become very closely correlated and, I believe, they would argue that it's because of the subject imports of alloy magnesium. First of all, is it true that they're closely correlated and are there reasons other than imports why that might be?

MR. MCHALE: The die casting alloy generally is in the, at least 90 percent magnesium content. So, at that high of a percentage, they should be very closely correlated. The other alloy ingredients, whether it be aluminum, zinc, or manganese, are all priced below magnesium. So, metallurgically, it should sell at a discount to primary magnesium. It's like adding Hamburger Helper. It's feedstock that costs less. So, the product should be -- metallurgically, it should be at a discount.

MR. REILLY: Mr. Deyman, John Reilly. I think there's one more point that needs to be made here and that is that the end product of the die casting market is principally automotive, but there are other -- some other applications. The major application of pure is in aluminum. Both of those are

cyclical products that -- end products that are affected by changes in the general economic conditions. So, if you have a situation where a recession occurs and aluminum demand is weak, automotive demand is weak, there's going to be similar behavior in their raw material price.

MR. DEYMAN: The Petitioners, also, contend that secondary alloy magnesium is fully substitutable for primary magnesium in most applications. Would you agree with that?

MR. MCHALE: Once again, it's got beryllium in it. It wouldn't be substitutable at Alcoa.

MR. SHAPIRO: For Alcan, and we'll address this further in the brief, it's only recently with changes in technology that allow that to happen.

MR. DEYMAN: I didn't hear a great deal about cumulation. Could you comment on why or why not the imports should be cumulated?

MR. LEIBOWITZ: This is Lewis Leibowitz. We'd be happy to do it in the post-hearing submission, if we may.

MR. GURLEY: Same for us.

MR. DEYMAN: And, finally, do any of you know the status of the antidumping investigation in Brazil on magnesium, ingot, and powder from China? I

know that there are a couple of representatives from Dianjin Magnesium here, that they may know the status of that investigation. But, if not, you can put it in your post-conference brief.

MR. KELLEY: I can tell you what I know right now, is that Rema is the manufacturer in Brazil. They filed against one of the Chinese. The Chinese, to my knowledge, have been told that the case will sit for at least six to 12 months before it's ruled on, with no further investigation, because they want to see how the market adapts to it. So, they were literally told, shut up and wait, we'll see what happens.

MR. DEYMAN: Very well, thank you. I have no further questions.

MR. CARPENTER: Thank you, ladies and gentlemen, for your testimony and for your responses to our questions. At this point, we'll take about a 10-minute break and then we'll resume with the closing statements, beginning with the Petitioners. Thank you.

(Whereupon, a brief recess was taken.)

MR. CARPENTER: Okay. Mr. Dorn, begin whenever you're ready, please.

MR. DORN: Thank you. Starting with like

product, the legislative history to the 1979 Act provides that the definition of like products should not be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration. In this case, it would contravene congressional intent to find that pure and alloy magnesium are not a like product, because such a finding would prevent consideration of the adverse impact of the dumped imports of Chinese alloy magnesium on US Magnesium's operations on pure magnesium.

Moreover, the evidence today is pretty straightforward. On the question of correlation of prices, you heard their testimony. It dovetails with ours. There's a correlation in pricing between pure and alloy magnesium, largely due to the fact that alloy magnesium is 90 percent pure magnesium.

Also, with respect to interchangeability in the aluminum and the steel desulphurization segments, we don't have any disagreement here. Alcoa did not dispute that it is importing alloy magnesium from China. Mr. Yosowitz indicated that Alcan is importing magnesium from China. He did not deny that that magnesium is alloy magnesium. He, also, made an affirmative point of the fact that Alcan is

increasingly using secondary alloy magnesium. Again, because this case involves primary and secondary, you have to consider the fact that there is interchangeability between pure magnesium and secondary alloy magnesium in that end-use segment.

And, finally, Mr. Reilly basically concedes there's substantial overlap. We don't need total overlap. The cases don't require total interchangeability. In fact, they don't require any interchangeability at all, as Mr. Narkin explained. But, here, we have substantial overlap in a significant end-use market, where both pure and alloy are being used interchangeably.

Applying the statutory criteria to the facts of this case, there can be no doubt that there is at least a reasonable indication that the domestic industry is materially injured or threatened with material injury. First, the volume of imports is significant in relation to U.S. production and U.S. consumption, as shown in Exhibit 25 of the petition. The increase in the volume of imports is, also, significant. In fact, the volume of subject imports jumped 70 percent from 2000 to 2003. No one can deny that fact.

Second, the dumped imports have undersold

domestic product and have had a depressing effect on domestic prices. We believe that the data that you collect in your questionnaires will show significant margins of underselling, even though Alcoa admits that this is a commodity product and even though US Magnesium has been forced to lower its prices, in order to keep its new electrolytic cells up and running. Even in that situation, we believe you'll find significant underselling by the imports.

The average unit value of the subject imports fell 27 percent from 2000 to 2003. And I'll refer back to Mr. Button's Exhibit 2, which showed the prices of Russian alloy, Russian pure, and Chinese alloy, all converging at a very low point in 2003. If there were non-price factors, such as the bankruptcy of US Magnesium and high energy costs and so forth, why did the prices go down? Why weren't they going up?

And, then, they say, well, don't look at the past, don't look at this downward trend of prices, the 27 percent drop in price in the past, look to the future. Trust us, we won't keep lowering our prices. Prices are going to go up from China. Based on the record evidence that you will have in this investigation, it's clear that domestic prices have

gone down, forced down by the imported prices from China and Russia. There couldn't be a clearer case of price depression caused by dumped imports.

Now, Dr. Stern talked about cyclical demand, but she ignored the supply side of the equation. And any economist knows that you set price by looking not only at demand, but, also, at supply. Without the 70 percent increase in dumped imports, prices surely would have been higher. Any economist would tell you, they would have had to have been higher.

Dr. Stern, also, talked about high energy costs being a cause of the industry's problems. This is a classic situation of a price-cost squeeze. In fact, if US Magnesium's prices had been flat and energy prices are going up and we are unable to raise our prices, we'd be arguing that the imports were suppressing prices and that that's injury. But, here, we go one step further. In a situation of rising costs, prices are going down. The only reason they're going down is they're following down the import prices from Russia and China.

Dr. Stern, also, suggested that the financial problems are self-inflicted. A couple of witnesses point out -- or made that point. And they suggested that US Magnesium is siphoning off its cash

to send to its distant owner. Weren't they here this morning to hear the testimony? Did they hear that US Magnesium has spent $50 million of retained earnings to modernize its plant in Utah? Is that called siphoning off cash to give to your owner? I don't think so.

Dr. Stern, also, referred to various lawsuits, all of which contain allegations, all of which are being disputed by the company, some of which are in confidential settlement negotiations, and we'll address those in our post-conference brief.

Getting back to the statutory factors, the adverse volume and price effects of the dumped imports have had a very severe adverse impact on the domestic industry. Taking into consideration the closing of Northwest Alloys in 2001, it's obvious that the industry's capacity, production, employment, and shipments all fell sharply from 2000 to 2003. Most telling from the questionnaire data would be the fact that the domestic industry's average unit shipment values fell in response to declining import prices. The data collected in the questionnaires are going to show severe drops in industry revenue, gross profit, and operating income, all due to the declining prices, and the declining prices are all due to imports from

China and Russia.

Now, I think it's, also, very important to emphasize the information that's contained in Exhibits 3 and 4 to Dr. Button's testimony, which compare the prices of imports from Russia and China versus imports from all other countries. Looking at Exhibit 4 on alloy magnesium, the average unit values from Russia and China are consistently and substantially lower than the average unit values of alloy magnesium from non-subject countries. But, I heard Mr. McHale of Alcoa, the largest purchaser of magnesium in the world, say this is a commodity product. There's no difference among nations. This is all attributable to dumping. And it's the Russians and the Chinese that are solely responsible for the price declines that are taking place in the United States. Exhibit 3 tells the same story with respect to pure magnesium, comparing average unit values from Russia versus average unit values from the rest of the world.

With respect to causation, again, we ask the Commission to study carefully the evidence presented on loss sales and loss revenues. There's some claims made about US Magnesium being at full capacity. Well, I would refer you to Exhibit 8 of Mr. Reilly, where he talks about the export sales of US Magnesium during

late 2002 and 2003. Why was US Magnesium making export sales? Look at the confidential data in the questionnaire. Look at the volumes of its export sales. Why was it making export sales, especially at these prices? For one reason, it was losing sales in the United States.

Now, I don't think the Commission is going to need to get the question of threat of injury; but, if it does, there's ample evidence to support an affirmative threat determination. As already noted, the volume of imports is rapidly increasing and the average unit values are rapidly declining. These decreasing prices and the price underselling are going to push more imports from China and Russia into the United States and lead to more damage.

Thank you.

MR. CARPENTER: Thank you, Mr. Dorn. Mr. Leibowitz?

MR. LEIBOWITZ: Thank you, very much, Mr. Carpenter, and gentlemen of the staff. I'm pleased to try to wrap things up. This is an industry that is very familiar to the Commission. This is the fourth trip to the plate for US Magnesium and its predecessor companies.

Regarding like product, again, I think that

precedent should matter, to some degree, in these cases. In contested cases, the Commission has previously ruled that pure and alloy magnesium are separate like products and there is insufficient evidence in this record, in my judgment, to overturn that precedent. The alloy magnesium you heard today, that has been used in the aluminum field, is not suitable for substitution by die casters. There is a dichotomy between die cast use and other uses. And there is and remains a bright line. The alloy that was discussed earlier by Petitioners is an alloy that's been around for a long time and there really is nothing new there.

At the moment, prices are up. I was rather shocked to hear, even an attempt to make a threat case, based on the evidence we've heard today. The prices are up. I think there's no dispute about that. They are going up. Conditions are such that prices will continue to go up and they have been going up for several months now. The petition's timing was, I think, not fortuitous, but by design, and to mask this affect to file early. And I hope the Commission looks very carefully at all the evidence, as close to the present time as is practical to do, because you'll see the information about pricing and volume that I think

bears out my point.

There is no injury by reason of imports. I think the injury that we have heard today is explained by bankruptcy, by recession, and by management mistakes. We have, I think, significant evidence that we've already present, there is much more that will be presented to bear out that information.

China and Russia can't meet current demands. They're turning down orders. They are excusing themselves, or trying to, from contracts they've already made.

So, you ask why is US Magnesium filing this case, at the present time? I think that we have some useful information on that, some of which we've given today and some of which we'll give you in the post-hearing brief. It is not because of the standard antidumping scenario. Rising imports, declining prices are not the current condition of this market, so there must be other reasons for it.

This market needs imports. That is pure and simple. There's one U.S. producer of magnesium that remains in this market. It is too small to supply the domestic demand. There will be serious consequences, if walls are thrown up to stop imports that this market desperately needs. You'll be losing more jobs

in the country than you'll be gaining.

I think that Dr. Stern did look at the supply situation. There was an imbalance, when the prices went down between supply and demand. There was too much supply and not enough demand. That situation, as she pointed out, has reversed. The demand has remained relatively stable, but the supply has gone down; tremendous loss of capacity in this market. And the rising imports from Russia and China, over the last couple of years, were insufficient to make up for the lost capacity in this country. So, there's really no indication of injury there.

Now, I think that we will comment further on the nature of the magnesium product; but, again, I reiterate, in our view, pure and alloy magnesium are different products and they have different relationships to each other. The correlation between pure and alloy magnesium for sure is related, in large part, to the fact that magnesium makes up the vast majority of both, all of pure, of course. But, there are other factors, too, that suggest that the prices should be different from each other. They may converge; they may diverge. I don't think we have sufficient proof here to establish the like product.

I am, also, anxiously awaiting my review of

the loss sales and revenue issues. I think that there is a word for what US Magnesium was apparently doing in Canada, selling at the prices that are noted on the export statistics, and I think that in their position in 2002, trying to increase market share, it was not solely due or even largely due to lost sales, but the effort to regain sales in the fact of reasonable competition that led them to export to Canada at very, very low prices.

To wrap up, I think there is absolutely no question that there is sufficient evidence on this record for the Commission to make a negative determination of the preliminary investigation. And regarding material injury and regarding threat, there is simply no indication of a real and imminent threat, which is what the statute requires.

I thank you all for your time and attention, and that concludes my rebuttal.

MR. CARPENTER: Thank you, Mr. Leibowitz, and I want to thank everyone for coming here today to help us develop the record in the preliminary phase of this investigation. I understand that an APO release should be ready at the conclusion of the conference. So for those of you, who are APO parties, you might want to stop by the Secretary's office on your way out

and pick up your package.

A couple of dates to note. The deadline for both the submission of corrections to the transcript and for briefs in the investigation is Wednesday, March 24th. If briefs contain business proprietary information, a non-proprietary version is due on March 25th. The Commission is scheduled to vote on the investigation for April 12th, at 1:00 p.m. It will report its determination to the Secretary of Commerce later that date. And Commissioner's opinions will be transmitted to Commerce on April 19th.

Thank you for coming. This conference is adjourned.

(Whereupon, at 2:04 p.m., the conference was adjourned.)

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CERTIFICATION OF TRANSCRIPTION:

TITLE: Magnesium from China and Russia

INVESTIGATION NO.: 731-TA-1071 & 1072

HEARING DATE: March 19, 2004

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: March 19, 2004

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
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Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

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I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

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Signature of Court Reporter